2026:BHC-NAG:77

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO. 743 OF 2010

The New India Assurance Company Ltd.,
through its Divisional Manager,
A.D.C.C. Bank Building,
Old Cotton Market, Akola .....APPELLANT

...V E R S U S...

1. Smt. Nargis Khatun wd/o Mohd. Nazim,
aged about 41 yrs, Occ. Household work

2. Ku. Samreen d/o Mohd. Nazimm,
aged about 16 years, Occ. Education.

3. Saba d/o Mohd. Nazimm,
aged about 15 yrs, Occ. Education

4. Mohd. Javed s/o Mohd Nazim,
aged about 12 yrs, Occ. Education

Nos. 2 to 4 are minors,
through natural guardian
mother, applicant No.1.

All r/o Bahadurpura, At Balapur,
Tq. Balapur, Dist. Akola

5. Prakash B. Sharma
aged adult, Occ. Contractor,
Infront of Cotton Market,
at Balapur, Tq. Balapur, Dist. Akola. .....RESPONDENTS

Ms. S.H. Bhatia, Advocate h/f Mr. P.V. Ingle, Advocate for appellant
Mr. V.G. Lohiya, Advocate for respondent Nos. 1 to 4.

CORAM: RAJNISH R. VYAS, J.
DATE : 08.05.2026

ORAL JUDGMENT

An appeal preferred by the Insurance Company under Section 30 of the Workman's Compensation Act, 1923 takes an exception to the judgment passed by the Commissioner under the Workman's Compensation/Labour Court, Akola in W.C.A. Case no. 21/2023, by which, an application preferred by the respondent nos. 1 to 4 was partly allowed.

2. The parties in the present proceeding would be referred as they were referred before the trial Court.

3. One Mohd. Najim (hereinafter, referred to as "deceased"), was working with non-applicant no.1 as a driver on the truck.

4. On 4.10.2022, Mohd. Nazim was driving the aforesaid vehicle and proceeded towards the spot where he was to load the bricks in the truck. On the way, tyre of the truck dashed to stone due to which he sustained injuries to the abdomen and stomach and was taken for treatment initially at Balapur hospital, and thereafter, in a hospital of Dr. Abhay Shah at Akola. On the next day, he was declared dead in Mankar Critical Care Centre at Akola. The

deceased was 40 years of age at that time and was drawing salary of Rs. 2300 per month.

5. The truck in question bearing no. MTV 2877 was insured with non-applicant no. 2 and the policy was valid from 10.2.2002 till 9.2.2003 covering the risk of the driver, coolies and other employees. The legal heirs of deceased preferred an application on 30.8.2023, under Section 4 of the Workman's Compensation Act, for grant of compensation in which the owner and the insurance company were joined as party respondents. In pursuance to the summons issued, non-applicant no. 2 Insurance Company appeared but non-applicant no.1/owner did not. By way of written statement, it was stated that the deceased was suffering from duodenal ulcer perforation peritonitis and died on account of the said disease.

6. Thus, the plea was taken that Mohd. Nazim had not met with an accident during the course of employment or arising out of employment. A stand was also taken that notice under Section 10 of the Workman's Compensation Act was required to be given to the employer as well as to the Insurance Company but the same was not done.

7. In order to prove claim, witness no. 1 Nargis Khatun widow of deceased was examined, so also, witness no. 2 Gulam Akil, who on the day of accident, was accompanying the deceased. Witness no. 3 Liyakat Khan, who was also working with the deceased.

8. Witness no.1 of the non-applicant no.2 / Insurance Company was Chandrashekhar Anantrao Pandey, who was working with the non-applicant no. 2 as an Administrative Officer.

9. Witness no. 2 examined by the non-applicant no.2 was Dr. Vilas Sonone, who was attached to Mankar Critical Care Centre and had issued certificate below Exhs. 34 and 44. According to him, due to accident, the said disease cannot happen. It is this, evidence of witnesses and the arguments advanced, which were taken into consideration by the Commissioner and on 23.4.2009, the application came to be allowed by which the non-applicant no.1/owner and non-applicant no. 2 Insurance Company were directed to pay jointly and severally compensation to the claimants.

10. The non-applicant no. 2 was also directed to pay to the

claimants simple interest on the said compensation amount @ 12% per annum from the date of filing of the application till realization. The non-applicant no.1/owner was directed to pay penalty to the extent of 50% of compensation amount which was of Rs. 1,02,632/-. The cost of Rs. 1000/- was also awarded. It is this judgment which is challenged by the non-applicant no.2/Insurance Company before this Court by preferring an appeal under Section 30 of Workman's Compensation Act.

11. Before dealing with the merits of the case, it cannot be ignored that the appeal under Section 30 can be entertained when a substantial question of law, is involved. This Court, on 11.10.2010, admitted the matter on the following substantial question of law:

> Whether the appellant/Insurance Company was liable to pay interest on compensation payable to the claimants?

12. The learned counsel for the appellant had also preferred an application dated 6.1.2025 bearing no. 507/2026 for grant of permission to raise additional substantial grounds. The substantial grounds which are tried to be raised in the application are as under:

> *i. Whether the death of the deceased which was occurred due to burst of ulcer and was not in any manner related to the accident during the course of*

employment can be said to attract the provisions of Sect. 4 of the Workman's Compensation Act. ?

ii. It is not that the fact of death due to Ulcer was proved by the evidence of Dr. Vilas Sonone and C.A.Pande and the report of Mankar Critical Care Hospital. Whether on the face of overwhelming proof of death due to pre-existing disease i.e. Ulcer, the learned Lower Court was correct in law in holding that the deceased died due to accident occurred during the course of employment?

iii. Whether the learned Commissioner under Workman's Compensation Act was correct in law in awarding compensation in the absence of any report of accidental death to the police station. It is not that the learned Commissioner ought to have enquired and ought to have put the burden of proving the accidental death on the claimant and ought to have required furnishing the documents such as Form AA, Panchanama of spot, statements of eye witnesses and Investigating Officer's report. In the absence above authentic evidence whether the Commissioner exceeded its jurisdiction by presuming that the death of the deceased was due to accident arising during the course of employment?

iv. Whether the learned Lower Court had committed patent error of law in allowing the claim despite the fact that the claimant did not issue mandatory notice U/s 10 of the Workman's compensation Act to the insurer? Therefore, whether the appellant insurer liable to pay the interest on the amount of compensation adjusted.

It is in this background, I have heard the learned counsels for the respective parties and have pondered over the issue.

13. At the outset, it is necessary to consider the law laid down by the Hon'ble Apex Court in case of ***North East Karnataka Road Transport Corporation Vs. Sujatha (2019)1 SCC 514***, more particularly, paragraphs 9 and 10, which read thus:

> *"9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident, etc are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of employment and he/his LRs sue(s) his employer to claim compensation under the Act."*
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> *"10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact."*

14. Since, the substantial question of law is framed as to whether the Insurance Company is liable to pay interest on compensation payable to the claimants, the same will have to be

looked into. This Court in case of ***Rahemanbi wd/o Abdul Rashid and another Vs. Parmjitsingh s/o Ajabsingh Gujjar,*** in First Appeal No. 629/2007, decided on 20.10.2008, has clearly held that the Insurance Company is liable to pay interest also. Thus, the question framed is already answered and therefore, the order passed by the Commissioner requires no interference. The relevant observation of this Court in case of ***Rahemanbi wd/o Abdul Rashid and another,*** (cited supra) is reproduced as under:

> *"7. The learned counsel for the appellant Mr.Chandurkar urged that the respondent No.2 is also liable to pay interest on the amount as there is neglect to pay the compensation by respondent no.1. He submits that respondent no.2 being an Insurance Company has undertaken the liability to reimburse respondent no.1 to the extent of compensation as well as interest. Shri Chandurkar further submits that such liability to pay arises because the compensation is not paid within one month from the date it falls due. Shri Chatterjee, learned counsel for resp0ondent no.2 – Insurance Company, on the other hand, submits that the liability to pay compensation and consequently interest does not arise ((falls due) until it is adjudicated. Shri Chatterjee further submitted that order of Commissioner, therefore, calls for no interference. He relied on a decision reported in* ***2007-I-LLJ, pg.1035 (National Insurance Co.Ltd. ..vs.. Mubasir Ahmed and anr.****). The Supreme Court observes thus -*
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> > *Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under Section 4-A was dealt with by this Court in Maghar Singh v. Jashwant Singh (1998)9 SCC 134: 1999-III-LLJ (Suppl)-71. By amending Act, 14 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate*

> *of interest to be simple interest @12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A(1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due goes not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It proves that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident." Unless there is an adjudication, the question of an amount falling due does not arise.*

Their Lordships of the Supreme Court observed that since there is no indication in Section 6 as to when it falls due. It must be taken to have fallen due only upon adjudication. Shri Chandurkar, however, submits that this judgment of the Supreme Court cannot be treated as good law and is per incuriam. He submits that the decision in Mubasir Ahmed's case is rendered by Bench of two Hon'ble Judges while there is a decision rendered by Bench of four Hon'ble Judges on the subject which should be held to be holding the field. The said decision is reported in ***(1976)1 SCC 289 (Pratap Narain Singh Deo ..vs.. Srinivas Sabata and anr.****), Their Lordships observed as follows -*

> *6. It has next been argued that the*

Commissioner committed a serious error of law in imposing a penalty on the appellant under Section 4A(3) of the Act as the compensation had not fallen due until it was 'settled' by the Commissioner under section 19 by his impugned order dated May 6, 1969. There is however no force in this argument.

7. Section 3 of the Act deals with the employer's liability for compensation. SubSection (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

8. It was the duty of the appellant, under Section 4A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was casual

> *contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity or making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty.*
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> *Thus, a Larger Bench of the Apex Court, in fact, settled the law that the liability to pay compensation is not suspended until it is settled by the Commissioner. In the instant case and as in the reported case respondent no.1 had tried to raise a false plea of non-existence of relationship of employer and employee and avoided to pay compensation. Relying on the decision of the Supreme Court in* ***Pratap Narain Singh Deo*** *case, respondent no.2 ought to be held liable to pay interest also. I would, therefore, allow the appeal and modify the order of the Commissioner to the extent that respondents no.1 and 2 shall be jointly and severally liable to pay the compensation as well as interest as ordered by the Commissioner. The petition is thus disposed of in the above terms. The appeal is thus allowed."*

Thus, the law is now settled that the Insurance Company is also liable to pay the interest on compensation.

15. So far as the Application bearing No. 507/2026 which prays for permission to raise the substantial questions of law is concerned, it can be said that none of the questions which are raised

by way of said Application are substantial questions of law. The questions framed are essentially the questions of facts which are already proved by way of evidence on record. Since, no perversity is pointed out in the findings given by the Commissioner, and since, it is not even the case that findings are not based on the evidence, I do not find any merit in the present appeal, therefore, the appeal is dismissed.

(RAJNISH R. VYAS, J.)

Belkhede