

Shantilata Sethy and Anr. Vs. M/s. Divisional Manager, the New India India Assurance Company Ltd. and Anr.

Civil Appeal Nos. 7657-7658 of 2021 arising out of SLP (C) Nos. 16316-16317 of 2019
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Full judgment text

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[Civil Appeal Nos. 7657-7658 of 2021 arising out of SLP (C) Nos. 16316-16317 of 2019]

Dr. Dhananjaya Y. Chandrachud J

1. Leave granted.

2. These appeals arise from the judgments of a Single Judge of the High Court of Odisha in FAO No 305 of 2016 dated 30 November 2018 and in Review Petition No 261 of 2018 dated 1 February 2019.

3. The facts of the case are as follows: The deceased workman, who is the son of the appellants, was working as a helper in a truck bearing registration No OR - 04 A 1225 belonging to the second respondent, who was his employer. The truck was insured with the first respondent. At 11 am on 30 October 2004, when the truck was carrying goods from Paradeep to Jadupurgoda, the driver negotiated with a person to carry back thirty bags of rice to Chandikhol on its return trip.

The driver instructed the deceased helper to get down from the truck and make necessary arrangements for loading of the rice bags. The driver of the truck is alleged to have lost control of the truck and dashed into the helper who struck against a tree on the side of the road. The workman succumbed to his injuries on 1 November 2004.

4. The appellants filed an application before the Court of Commissioner¹ claiming a compensation of Rs. 3,00,000 under the provisions of the Workmen's Compensation Act 1923. The deceased was twenty-four years old at the time of the accident and was receiving a salary of Rs. 2400/- per month, and Rs. 25/- everyday towards food expenses. The amount was admitted by the employer.

The claim for workman's compensation was disposed of on 29 February 2016. It was observed that any special expense paid to the employee by nature of his employment is covered within the meaning of 'wages' under Section 2(m) of the Act. Therefore, the total monthly wages at the time of the accident were calculated to be Rs.2425/month.

According to Section 4 of the Act, where the death of a workman results from an injury, the total amount of compensation shall be an amount equal to fifty percent of the monthly wages of the deceased multiplied by the relevant factor. According to the IVth Schedule of the Act, the relevant factor for 24 years is 218.47. The total computation was calculated to be as follows: $(50\% \text{ of } 2425) \times 218.47 = \text{Rs. } 2,64,898.87$. The first respondent was directed to pay a compensation of Rs. 2,64,895/- along with interest at 12% p.a. from the date of accident till realization.

5. On appeal, the High Court by its judgment dated 30 November 2018, modified the award by reducing the compensation to Rs 1,98,807.70 and the interest from 12% to 8% from the date of the award till realization. The High Court has, while reducing the claim for compensation, proceeded on the basis that there was no material on the record to indicate that the salary of the deceased at the time of death was Rs 2,400 per month.

The High Court consequently proceeded on the basis of a minimum wage of Rs 910, to which a multiplier of 218.47 was applied resulting in a recomputed compensation of Rs 1,98,807.70. On the point of interest, the Court held that there is no provision in the Act to grant interest on the compensation from the date of the accident. Subsequently, the payment of interest was reduced from 12% to 8% from the date of award till realization. The review filed against the judgment was dismissed by an order dated 1 February 2019.

6. On behalf of the appellant, it has been submitted that the High Court has completely failed to consider that the award of interest is governed by Section 4(A) of the Act. Moreover, it has been submitted that the issue has been considered by this Court in *North East Karnataka Road Transport Corporation vs Sujatha*³, where it has been held:

"20. The question as to when does the payment of compensation under the Act "becomes due" and consequently what is the point of time from which interest on such amount is payable as provided Under Section 4-A (3) of the Act remains no more *res integra* and is settled by the two decisions of this Court.

21. As early as in 1975, a four Judge Bench of this Court in *Pratap Narain Singh Dea v. Srinivas Sabata and Anr.* MANU/SC/0021/1975: (1976) 1 SCC 289 : AIR 1976 SC 222 speaking through Singhal, J. has held that an employer becomes/liable to pay compensation as soon as the personal injury is caused to the workman in the accident which arose out of and in the course of employment. It was accordingly held that it is the date of the accident and not the date of adjudication of the claim, which is material."

7. The appeals before this Court indicate the manner in which the litigation process can drag on for years. In consequence, a poor farming family is lost in a long drawn out battle to secure a paltry compensation of Rs 2,64,895 awarded by the Commissioner of Labour under the Act for the death of their son for an accident which took place in 2004. After the Commissioner awarded compensation, the parents of the deceased workman had to initially defend the proceedings brought by the insurer before the High Court and thereafter pursue their own challenge to the judgment of the High Court before this Court.

When will a high and mighty state owned insurance company realize its social conscience? Our conscience has been deeply disturbed by the manner in which a farmer and his spouse have been left to the mercies of legal procedure. Should the insurer have dragged the parents to the High Court over the award of Rs 2.64 lakhs for the death of their wage earning son? It is time that there is a fundamental rethink on this. Families of the victims of motor accidents cannot realize rights under law so long as litigation continues to be a stratagem and source of harassment and torture.

8. In the present case, the claim was on the basis that the deceased was earning an amount of Rs 2,400 per month. The claim was not disputed by the employer. There was absolutely no basis for the High Court to reduce the award on the ground that there was no material to establish the salary that the deceased was earning at the time of the accident.

There was no ground to proceed on the basis of the minimum wage, particularly when there was nothing untoward or exaggerated in the claim for compensation based on the salary which was earned by the deceased. The second respondent has in his written statement and affidavit, stated that the deceased helper was receiving a salary of Rs 2400/month. This statement has not been discredited.

The deceased was an informal worker, who was working as a helper in a transport business under the second respondent, earning a meagre wage of Rs. 2400 at the time of the accident. Such employees are not provided receipts on the payment of wages, nor can it be reasonably assumed that the employer would maintain receipts for the payment of wages to his employees. There was no reason for the High Court to observe that there was no material to establish the wages paid.

9. As a matter of fact, we are clearly of the view that there was no justification for the insurer to take a matter involving such a paltry sum of compensation based on the facts of the case to the High Court and to allow a poor farmer and his wife who have already lost the solace of an earning member of the family into a long drawn out litigation.

Thus, and for the reasons that we have indicated, we are of the view that the judgment and order of the High Court would have to be set aside. Section 2(m) of the Act defines 'wages' to include "any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a *[employee] towards any pension or provident fund or a sum paid to a *[employee] to cover any special expenses entailed on him by the nature of his employment".

Therefore, Rs 25 that was paid by as food expense by the employer would fall within the 'special expenses that he is entitled to by the nature of his employment' which is specifically excluded by the provision. Therefore, the total compensation to be paid is as follows: $(50\% \text{ of } 2400) \times 218.47 = \text{Rs. } 2,62,164$. The first respondent is directed to pay Rs. 2,62,164 along with an interest of 12% from the date of accident till it is realised.

10. In the event that the insurer has paid any part of the compensation that has fallen due in pursuance of the order of the Commissioner of Labour, that shall be given due credit for in computing the balance which is due and payable. The balance shall be paid over to the appellants within a period of one month from the date of this order.

The Commissioner shall personally ensure that the amount is paid over to the appellants. In addition, the appellants shall be entitled to costs quantified at Rs 1 lakh towards for meeting their costs and expenses of the proceedings which have been conducted in the courts below.

11. The appeals are allowed in the above terms.

12. Pending applications, if any, stand disposed of.

1 Case No. 273-D/2004

2 "The Act"

3 (2019) 11 SCC 514

Item No. 17

Shantilata Sethy & Anr. Vs. M/S Divisional Manager the New India Assurance Company Ltd. & Anr.

[Petition(s) for Special Leave to Appeal (C) Nos.16316-16317/2019 arising out of impugned final judgment and order dated 30-11-2018 in FAO No.305/2016 and 01-02-2019 in RVWPET No.261/2018 passed by the High Court of Orissa at Cuttack]

These petitions were called on for hearing today.

CORAM:

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE A.S. BOPANNA

For Appellant(s)

Mr. Anirudh Sanganageria, AOR

For Respondent(s)

Mr. Abhishek Gola, Adv. Mr. Viresh B. Saharya, AOR Mr. Akshat Agrawal, Adv. Mr. Anshul Mehral, Adv.

UPON hearing the counsel the Court made the following

1 Leave granted.

2 The appeals are allowed in terms of the signed reportable judgment.

3 Pending applications, if any, stand disposed of.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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