

Neutral Citation No. - 2025:AHC-LKO:11083

A.F.R.

**Court No. - 4**

**Case :-** FIRST APPEAL FROM ORDER No. - 758 of 2011

**Appellant :-** National Insurance Co. Ltd. Thro. Its Assistant Manager

**Respondent :-** Shiv Gopal S/O Late Fateh Bahadur And Another

**Counsel for Appellant :-** S.C. Gulati

**Counsel for Respondent :-** Aditya Prakash Sharma, Herpal Singh Chadha, Inderpreet Singh Chadha, Raj Kumar Pandey, Vivek Pandey

**Hon'ble Rajnish Kumar, J.**

1. Heard Ms. Pooja Arora, Advocate holding brief of Shri S.C. Gulati, learned counsel for the appellant, Shri Sunny Sharma, Advocate holding brief of Shri Aditya Prakash Sharma, learned counsel for the claimant-respondent no. 1 and Shri Shubham Singh, Advocate holding brief of Shri Raj Kumar Pandey, learned counsel for the respondent no. 2/the owner of vehicle.

2. This First Appeal From Order under Section 30 of the Employee's Compensation Act, 1923 has been filed against the judgment and award dated 30.05.2011 passed by Additional District Magistrate Trans Gomti and Commissioner, Employee's Compensation, Lucknow in W.C. Case No. 18 of 1999; Shiv Gopal and others vs. Dharmendra Awasthi and others,

awarding a compensation of 2,16,910/- along with interest @ 6 percent per annum as interest to the claimant-respondent no. 1 w.e.f. the date of impleadment of Insurance Company i.e. 11.08.2006.

3. Learned counsel for the appellant submits that the owner has denied that the deceased driver was in his employment. The P.W.2 has also proved that the deceased was driving the vehicle. He further submits that the necessary documents such as Registration Certificate of Tempo, Permit, Fitness, and driving licence were not brought on record, but the learned Compensation Commissioner without considering it and on the ground that it does not make any difference because it should have been seen at the time of insurance, allowed the claim and the appellant has been held liable to satisfy the award, which could not have been done. He relies on **Sardari and others vs. Sushil Kumar and others; 2008 ACJ 1307, United India Insurance Company Limited vs. Sujata Arora and others; 2013 (3) T.A.C. 29 (S.C.) and Fazlu Rahman Ansari vs. National Insurance Company Limited and others; (2019) 13 SCC 806**. No other ground has been urged or pressed.

4. Learned counsel for the claimant-respondent no.1 submits that the deceased was in employment of the respondent no.2, which is apparent from the fact that the First Information Report was lodged by the owner admitting that the deceased was in his employment as driver, therefore, the contention of learned counsel for the appellant in this regard is misconceived and not tenable. In regard to the Registration Certificate etc., which were not brought on record, learned counsel for the claimant-respondent no.1 submits that they were not required because once the vehicle was insured it is liability of the Insurance Company to pay the compensation. Thus, the substantial question of law, on which the appeal has been admitted, does not arise in this appeal. The appeal is misconceived and liable to be dismissed. He relies on **North East Karnataka Road Transport Corporation vs. Sujatha; (2019) 11 SCC 514.**

5. Learned counsel for the respondent no. 2 i.e. owner of the vehicle submits that Sarvesh Kumar was not the driver of the respondent and since the vehicle was insured by the appellant-insurance company, therefore the compensation determined by Commissioner, Employees Compensation, Lucknow is to be paid by the appellant-insurance company

and the substantial question of law on which this appeal has been admitted does not arise in this appeal.

6. I have considered the submissions of learned counsel for the parties and perused the records.

7. The case was filed by the claimant-respondent no.1 under Section 3/4 of the Employees Compensation Act, 1923 claiming compensation alleging therein that the son of the claimant-respondent no. 1 i.e. the deceased Sarvesh Kumar was working as driver on Tempo No. UP 32 Q 5036. He went on 24.05.1998 from Nigoha to Bachrawan, District Raebareli with passengers on a booking on the said tempo. Thereafter, he did not return. On 27.05.1998, an information was received that he has died. His dead body was found in the Village of Dehwa, Rani Kheda, Mohanlalganj, District-Lucknow. The deceased Sarvesh Kumar was an employee of the respondent no. 1 in the claim case i.e. the respondent no. 2 here in this appeal and he died in the course of his employment. He was getting Rs. 2500/- per month as monthly salary. The claimant-respondent no. 1 is the father of the deceased and depending on him. The deceased Sarvesh Kumar was aged about 25 years at the time of his death. A notice

under Section 10 through an Advocate was sent to the employer on 02.02.1999. The claimant-respondent is authorized to receive Rs. 3 lakh as compensation. In case, the insurer of the vehicle informed by the owner, he would be impleaded because he is liable to make the payment of compensation in accordance with law and despite notice, the compensation has not been paid.

8. The respondent no. 1 in the claim case i.e. respondent no. 2 herein in this appeal filed a written statement on 15.03.2001 denying that the deceased Sarvesh Kumar was working as driver of Vehicle no. U.P. 32 A 5036. The police has recovered his dead body from the forest of Village-Dehwa, Rani Kheda. The deceased was never in his employment and since he was not in his employment, therefore, he has no knowledge of his income. He also denied receipt of the notice. In reply to the objection filed by the respondent no. 2, the averments made in the claim petition were reiterated. The respondent no. 2 filed his written statement again on 31.07.2006 disclosing therein that the vehicle was insured with National Insurance Company Limited with insurance policy No. 450301/31/60/03530 Branch A-4/4, Jail Garden Road, Raebareli, reiterating the averments made in the earlier

objection. It appears that thereafter the insurance company was impleaded in the claim case as respondent no. 2/appellant in this appeal. The respondent no. 2-appellant in this appeal filed its written statement stating that the claimant-respondent no. 1 is not entitled for any compensation and denied the averments made in the claim petition taking several pleas.

9. After considering the pleadings of the parties, the Additional District Magistrate Trans Gomti and Commissioner, Employees Compensation, Lucknow decided the case by means of the judgment and order dated 30.05.2011 and allowed the compensation of Rs. 2,16,910/- along with interest of six percent per annum from the date of impleadment of the appellant-insurance company i.e. 11.08.2006. Being aggrieved, the judgment and award passed by the Employees Compensation Commissioner, Lucknow has been challenged in this appeal. The following substantial questions of law is involved in this case:

*""As to whether the Insurance Company could have been held liable for payment of the amount awarded in absence of proof that the vehicle was being run in accordance with law and in accordance with the terms and conditions of the policy."*

10. Learned Compensation Commissioner, after considering the pleadings, evidence and material on record, has held that the deceased Sarvesh Kumar was in employment of the respondent

no.2 herein as the vehicle was handed over to him by the owner himself, as such, at the time of the incident, he was an employee of the employer i.e. the respondent no. 2 herein.

11. The Hon'ble Supreme Court, in the case of **Fazlu Rahman Ansari vs. National Insurance Company Limited and others (Supra)**, has held that the High Court had ignored the conditions contained in Section 2(i)(e) of the Employee's Compensation Act, 1923, which would cover the kind of employment by virtue of which the workman was rendering the services, even services through sub-contractors, therefore, the owner would be liable to make the payment of compensation awarded by the learned Compensation Commissioner.

12. The plea of the appellant-insurance company that since the registration certificate of the tempo, permit and fitness etc. have not been filed, the insurance company cannot be held liable for making payment of the compensation, has been rejected on the ground that the vehicle in question was covered by the insurance policy with effect from 31.01.1998 to 12.01.1999 and in absence of the said papers, the insurance policy would not have been issued and if the insurance policy

has been issued by the insurance company, it is liable to make the payment of compensation.

13. Admittedly, the license of the deceased Sarvesh Kumar has not been placed on record and in place thereof, the license of one Rambaran has been placed on record, whereas Rambaran has not been proved under employment of the employer i.e. the respondent no. 2 herein and driver of the vehicle at the time of the incident. Section 3 of the Motor Vehicles Act, 1988 provides that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle. Section 3 of the Act, 1988 is extracted hereinbelow:-

*"3. Necessity for driving licence.-(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motor cab 23[or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of Section 75] unless his driving licence specifically entitles him so to do.*

*(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government."*

14. In view of above, no person can drive a vehicle without a valid driving licence. The driving licence of the deceased Sarvesh Kumar has not been placed on record and it has not been proved by any cogent evidence that he was having a valid and effective driving licence on the date and time of incident. Thus, it can safely be presumed that the driver of

the vehicle was not holding an effective driving licence on the date and time of accident.

15. The insurance policy placed on record as paper no. 48 to 50 along with list 51 indicates that it is mentioned in General Exceptions applicable to all sections of the policy that the company shall not be liable under the policy in respect of any accident loss damage and/or liability caused sustained or incurred whilst the vehicle is being driven by any person other than driver stated in the Driver's Clause. In column 'Persons or classes of persons entitled to drive', it is mentioned that any person including insured provided that a person driving hold an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a license. Therefore, the person driving the vehicle must have an effective and valid driving license at the time of accident to fulfill the terms and conditions of policy to hold the Insurance Company liable to indemnify the owner and satisfy the award. Thus, the finding of learned Compensation Commissioner that since the policy has been issued by the appellant-Insurance Company, therefore, it is liable to satisfy the award is erroneous, perverse and against the terms and conditions of policy and without application of mind because

the Insurance Company can be held liable to satisfy the award only if the vehicle was being driven in compliance of the terms and conditions of policy and the driver was having effective and valid driving licence at the time of accident.

16. Section 150 of the Motor Vehicles Act, 1988 provides the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. Sub-section 2(a) provides the grounds on which the insurance company can defend the action against him and one of the grounds is on a condition excluding the use of the vehicle by any person, who is not duly licenced.

17. In view of above, the vehicle can be driven by a person holding an effective and valid driving license at the time of accident, as such, if the vehicle was being driven by a person not having valid driving licence on the date and time of the accident, the insurer cannot be held liable for payment of compensation but it has not been considered by the Commissioner, Employees Compensation, Lucknow.

18. The Hon'ble Supreme Court, in the case of **Sardari and others vs. Sushil Kumar and others (Supra)**, held that the owner of the vehicle has a statutory obligation to see that the

driver of the vehicle whom he authorised to drive the same holds a valid licence. It has further been observed that a visible distinction may be noticed, viz., where the licence is fake and a case where the license has expired and considered several judgments of the Hon'ble Supreme Court, one of which is leading case of **National Insurance Company Limited vs. Swaran Singh; 2004 ACJ 1 (SC)**, which clearly lays down that the liability of the insurance company viz-a-viz the owner would depend upon the several factors and the owner would be liable for payment of compensation for a case where the driver was not having a licence at all. The relevant paragraph nos. 7 and 8 are extracted here-in-below:-

*"7. The concurrent finding of fact therein is that Sushil Kumar never held a licence. The owner of the vehicle has a statutory obligation to see that the driver of the vehicle whom he authorised to drive the same holds a valid licence. Here again, a visible distinction may be noticed, viz., where the licence is fake and a case where the licence has expired, although initially when the driver was appointed, he had a valid licence.*

*The question came up for consideration before this court in United India Insurance Co. Ltd. v. Gian Chand, 1997 ACJ 1065 (SC), wherein it was held:*

*"(12) Under the circumstances, when the insured had handed over the vehicle for being driven by an unlicensed driver, the insurance company would get exonerated from its liability to meet the claims of the third party who might have suffered on account of vehicular accident caused by such unlicensed driver..."*

*A three-Judge Bench of this court in the case of National Insurance Co. Ltd. v. Swaran Singh, 2004 ACJ 1 (SC), upon going through the provisions of the Act as also the precedents operating in the field, laid down the following dicta:*

*"(77) We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of section 5 of the Act has a responsibility to see that no vehicle is driven by a person who does not satisfy the provisions of section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to*

*drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it at all, e.g., a case where an accident takes place owing to a mechanical fault or vis major. [See Jitendra Kumar, 2003 ACJ 1441 (SC)]."*

*In National Insurance Co. Ltd. v. Kusum Rai, 2006 ACJ 1336 (SC), a Bench of this court (wherein one of us was a member) held:*

*"(9) It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of the condition of the contract of insurance. The appellant, therefore, could raise the said defence.*

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*(12) This court in Swaran Singh's case, 2004 ACJ 1 (SC), clearly laid down that the liability of the insurance company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not possessed of valid licence was considered in Swaran Singh's case (supra)."*

*8. Yet again in New India Assurance Co. Ltd. v. Prabhu Lal, 2008 ACJ 627 (SC), the court stated the law in the following terms:*

*"(33) In the present case, all the facts were before the District Forum. It considered the assertion of the complainant and defence of the insurance company in the light of the relevant documentary evidence and held that it was established that the vehicle which met with an accident was a 'transport vehicle'. Ram Narain was having a licence to drive light motor vehicle only and there was no endorsement as required by section 3 of the Act read with rule 16 of the Rules and Form No. 6. In view of necessary, documents on record, the insurance company was right in submitting that Ashok Gangadhar Maratha's case does not apply to the case on hand and the insurance company was not liable."*

*However, Swaran Singh's case, 2004 ACJ 1 (SC), has been distinguished by this court in some cases holding that where the owner of the vehicle himself is involved, insurance company will not be liable.*

*In Premkumari v. Prahlad Dev, 2008 ACJ 776 (SC), a Bench of this court following Kusum Rai's case, 2006 ACJ 1336 (SC), opined:*

*"(10) In the case of National Insurance Co. Ltd. v. Kusum Rai, 2006 ACJ 1336 (SC), the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle was required to hold an appropriate licence therefor. Ram Lal, who allegedly was driving the said vehicle at the relevant time, was holder of a licence to drive light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Therefore, there was a breach of condition of the contract of insurance. In such circumstances, the court observed that the appellant National Insurance Co. Ltd., therefore, could raise the said defence while considering the stand of the insurance company. This court, pointing out the law laid down in Swaran Singh's case, 2004 ACJ 1 (SC), concluded that the owner of the vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not. However, taking note of the fact that owner has not appeared, the victim was aged only 12 years, the claimants are from a poor background and to avoid another round of litigation applying the decision in Oriental Insurance Co. Ltd. v. Nanjappan, 2004 ACJ 721 (SC) and finding that though the appellant insurance company was not liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court committed an error in holding otherwise, in the peculiar facts and circumstances of the case and in exercise of jurisdiction under Article 136 of the*

*Constitution declined to interfere with the impugned judgment therein and permitted the appellant insurance company to recover the amount from the owner of the vehicle."*

*In Oriental Insurance Co. Ltd. v. Prithvi Raj, 2008 ACJ 733 (SC), however, noticing Swaran Singh's case (supra), it was opined:*

*"(10) In the instant case, the State Commission has categorically found that the evidence on record clearly established that the Licensing Authority had not issued any licence, as was claimed by the driver and the respondent. The evidence of A.V.V. Rajan, Junior Assistant of the Office of the Jt. Commissioner & Secretary, RTA, Hyderabad who produced the official records clearly established that no driving licence was issued to Ravinder Kumar or Ravinder Singh in order to enable and legally permit him to drive a motor vehicle. There was no cross-examination of the said witness. The National Commission also found that there was no defect in the finding recorded by the State Commission in this regard."*

*In Ishwar Chandra v. Oriental Insurance Co. Ltd., 2007 ACJ 1067 (SC), this court held:*

*"(9) From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to section 15 (1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place on 28.4.1995; As on the said date, the renewal application had not been filed, the driver, did not have a valid licence on the date when the vehicle met with the accident."*

**19. The Hon'ble Supreme Court, in the case of United India Insurance Company Private Limited vs. Sujata Arora and others (Supra), observed that driving without licence or with a fake licence as driving a vehicle negligently are two different aspects of the matter. Holding a valid driving licence is a requirement of law, was being driven by a person holding a valid licence, but rashly and negligently, is a matter of evidence. The Hon'ble Supreme Court further observed that the view of the Court is fortified in the light of the two judgments reported in 2007 (4) SCALE 36: 2007 (2) T.A.C. 398; National Insurance Company Limited vs. Laxmi Narain Dhut; and 2011 (5) SCALE 494: 2011 (3) T.A.C. 12; Jawahar**

**Singh vs. Bala Jain and other** wherein it has been held that in case it is found that the offending vehicle was driven by driver, who was either holding no licence or a fake licence, then it amounts to violation of terms and conditions of policy and in that circumstances, no liability can be fastened on the Insurance Company. The relevant paragraphs 6 to 8 are extracted hereinbelow:-

*"6. However, learned Single Judge of the High Court proceeded on wrong assumption and held it otherwise giving rise to filing of the present appeal. The findings of learned Single Judge that even if driver was having a fake licence, would not exonerate the Insurance Company as he was not negligent in driving, are certainly erroneous. Driving without licence or with a fake licence as driving a vehicle negligently are two different aspects of the matter. Holding a valid driving licence is a requirement of law, was being driven by a person holding a valid licence, but rashly and negligently, is a matter of evidence. The very fact which stood established that licence of driver Jagdish was a fake one, would completely exonerate Insurance Company.*

*7. In the light of the aforesaid we are of the considered opinion that the impugned judgment, insofar as it fastens the liability on the Appellant Insurance Company, cannot be upheld. The same is to be set aside. We accordingly do so.*

*8. We are also fortified in our view in the light of the two judgment of this Court reported in 2007 (4) SCALE 36: 2007 (2) T.A.C. 398, "National Insurance Company Ltd. v. Laxmi Narain Dhut" and 2011 (5) SCALE 494 : 2011 (3) T.A.C. 12, "Jawahar Singh v. Bala Jain and other ", where in it has been held that in case it is found that the offending vehicle was driven by driver who was either holding no licence or a fake licence, then it amounts to violation of terms and conditions of policy and in that circumstances, no liability can be fastened on the Insurance Company."*

20. Adverting to the facts of the case in hand, the driver, who was under employment of respondent no. 2 i.e. owner at the time of accident, was not having an effective and valid driving licence at the time of accident, therefore, the vehicle was being driven not only against the statutory provision i.e. Section 3 of Motor Vehicles Act, 1988 but in violation of terms and conditions of Insurance Policy of the vehicle also.

As such, the Insurance Company cannot be held liable to satisfy the award and payment of compensation awarded by the Compensation Commissioner.

21. In view of above, the compensation awarded by the learned Compensation Commissioner is to be paid by the respondent no. 2-owner and the impugned judgment and award is liable to be modified accordingly.

22. Learned Compensation Commissioner has awarded the interest @ six percent per annum from the date of impleadment of the Insurance Company i.e. w.e.f. 11.08.2006. Now it is to be seen as to whether the interest can be allowed only with effect from the date of impleadment of the insurance company, whereas the payment of compensation is to be made by the owner himself in view of the aforesaid findings recorded by this Court.

23. Section 3 of the Employee's Compensation Act, 1923 provides the employers liability for compensation. It provides that if personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter. Section 4 provides the

amount of compensation. Section 4A provides compensation to be paid when due and penalty for default. Sub-section (1) of Section 4A provides that compensation under Section 4 shall be paid as soon as it falls due. Sub-section (2) provides that in case, the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts. Sub-section (3) provides that where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the commissioner shall direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon @ 12 percent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due. Section 4A is extracted hereinbelow:-

*"[4A. Compensation to be paid when due and penalty for default.-(1) Compensation under section 4 shall be paid as soon as it falls due.*

*(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the 2[employee], as the case may be, without prejudice to the right of the 2[employee] to make any further claim.*

*this [(3) Where any employer is in default in paying the compensation due under Act within one month from the date it fell due, the Commissioner shall-*

*(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher*

*rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and*

*(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty:*

*Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.*

*Explanation. For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).*

*[(3A) The interest and the penalty payable under sub-section (3) shall be paid to the 2[employee] or his dependant, as the case may be.]]"*

24. In view of above, the compensation is to be paid by the employer as soon as it falls due and it would fall due on the date of accident in which an employee suffers personal injury. Therefore, the amount of compensation would due on the date of accident.

25. In the present case, the accident occurred on 24.05.1998 and the F.I.R. was lodged on 27.05.1998, therefore, the compensation fell due on the said date but it was not paid, therefore, the respondent no. 2/owner is liable to pay interest @ 12% per annum w.e.f. 27.05.1998 in accordance with Section 4A (3) of the Employees Compensation Act, 1923.

26. The Hon'ble Supreme Court, in the case of **North East Karnataka Road Transport Corporation vs. Sujatha (Supra)**, considered the question of interest on the awarded amount and further from which date, it is to be awarded to the

respondent claimant and held that it would be due from the date of accident and it would not be less than 12 percent as a statutory provision has been made in this behalf and after considering the contrary view taken by the Hon'ble Supreme Court in different cases observed 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 and accordingly, the date of accident and not the date of adjudication of the claim, which is material. The Hon'ble Supreme Court, also considered as to whether in case the respondent did not challenge direction by filing any appeal in the High Court or in the Hon'ble Supreme Court, yet the question being a pure question of law, the Court with a view to do substantial justice to the respondent can consider it and accordingly modified the order of the commissioner and held that the awarded sum shall carry interest @ 12% per annum from the date of accident. The relevant paragraphs 19 to 30 are extracted hereinbelow:

*"19. The question relates to grant of interest on the awarded amount and Further, from which date, it is to be awarded to the respondent claimant.*

*20. The grant of interest on the awarded sum is governed by Section 4-A of the Act. 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 Deov, Srinivas Sabata 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.

22. Another question analogous to the main question arose before the three Judge Bench of this Court in Kerala *SEB v. Valsalu K.3* as to whether increased amount of compensation and enhanced rate of interest brought on statute by amending Act 30 of 1995 with effect from 15-9-1995 would also apply to cases in which the accident took place before 15-9-1995. Their Lordships, placing reliance on the law laid down in *Pratap Narain* case held that since the relevant date for determination of the rate of compensation is the date of accident and not the date of adjudication of the claim by the Commissioner and hence if the accident has taken place prior to 15-9-1995, the rate applicable on the date of accident would govern the subject.

23. After these two decisions, this Court in two cases (both by the two-Judge Bench) viz. *National Insurance Co. Ltd. v. Mubasir Ahmed* and *Oriental Insurance Co. Ltd. v. Mohd. Nasir* without noticing the law laid down in *Pratap Narain* and *Valsala<sup>3</sup>* cases took a contrary view and held that payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made.

24. This conflict of view in the decisions on the question was noticed by this Court (two-Judge Bench) in *Oriental Insurance Co. Ltd. v. Siby George*. *Aftab Alam, J.* speaking for the Bench referred to the aforementioned decisions and explaining the ratio of each decision held that since the two later decisions rendered in *Mubasir* and *Mohd. Nasir* which took contrary view without noticing the earlier two decisions of this Court rendered in *Pratap Narain* and *Valsala<sup>3</sup>* cases by the larger Benches (combination of four and three Judges respectively) and hence later decisions rendered in *Mubasir* and *Mohd. Nasir* cases cannot be held to have laid down the correct principles of law on the question and nor can, therefore, be treated as binding precedent on the question.

25. In other words, the law laid down in *Pratap Narain* and *Valsala<sup>3</sup>* cases was held to hold the field throughout as laying down the correct principle of law on the subject. The two Judge Bench in *Oriental Insurance Co. Ltd. v. Siby George* accordingly followed the principle of law laid down in *Pratap Narain* and *Valsala<sup>3</sup>* cases and decided the case instead of following the law laid down in *Mubasir* and *Mohd. Nasir* cases which was held per incuriam.

26. Now coming to the facts of this case, we find that the Commissioner awarded the interest to the respondents @ 12% p.a. on the awarded sum but it was awarded from the expiry of 45 days from the date of order and that too, if the appellant failed to deposit the awarded sum within 45 days.

27. In other words, if the appellant had deposited the awarded sum within 45 days from the date of the order then the respondent was not entitled to claim any interest on the awarded sum, but if the appellant had failed to deposit the awarded amount within 45 days, then the respondent was entitled to claim interest @ 12% p.a. from the date of the order.

28. In our opinion, the aforementioned direction of the Commissioner in awarding the interest on the awarded sum is contrary to law laid down by this Court in *Pratap Narain* case<sup>2</sup> and hence not legally sustainable.

29. In the light of the foregoing discussion, even though the respondent did not challenge this direction by filing any appeal in the High Court nor challenged it by filing any appeal in this Court too, yet the question being a pure question of law, this Court with a view to do substantial justice to the respondent considers it just and proper to modify the order of the Commissioner in the respondent's favour so as to make the same in conformity with the law laid down by this Court in the abovesaid two decisions (*supra*).

30. Accordingly and in view of the foregoing discussion, the order of the Commissioner dated 23-4-2002 is modified in favour of the respondent to the

*extent that the awarded sum of Rs 3,79,120 shall carry interest @ 12% p.a. from the date of accident i.e. 6-4-1999."*

27. The appeal is, accordingly, **allowed**. The impugned judgment and award dated 30.05.2011 passed by Additional District Magistrate Trans Gomti and Commissioner, Employee's Compensation, Lucknow in W.C. Case No. 18 of 1999; Shiv Gopal and others vs. Dharmendra Awasthi and others is modified to the extent that the compensation awarded by the learned Compensation Commissioner to the tune of Rs. 2,16,910/- shall be paid to the claimant-respondent no. 1 along with interest @ 12 % per annum from the date of accident i.e. 24.05.1998 by the respondent no. 2/owner instead of the appellant-Insurance Company. The amount of compensation shall be deposited by the respondent no. 2/owner, accordingly, within a period of six weeks from today with the Employee's Compensation Commissioner, Lucknow failing which it shall be recovered forthwith in terms of the impugned judgment and award dated 30.05.2011. No order as to costs.

28. The record of Employee's Compensation Commissioner, Lucknow shall be remitted back forthwith and in any case within a period of four weeks.

**Order Date :- 19.2.2025/Raj**