

**\*THE HON'BLE SRI JUSTICE M.LAXMAN**

**+ CIVIL MISCELLANEOUS APPEAL No.1639 OF 2008**

% 08-02-2023

# The New India Assurance Company Limited.

...Appellant

vs.

\$ Gundlapally Balreddy and another.

... Respondents

!Counsel for the Appellant: Sri A.Ramakrishna Reddy

^Counsel for Respondents: Sri M.Govind Reddy

<Gist :

>Head Note :

? Cases referred

1 2011 (14) SCC 639

2 2020 SCC Online SC 1312

3 MANU/SC/0240/1963 : AIR 1963 SC 1516

4 MANU/SC/0346/1965

5 AIR 1969 SC 1144

6 AIR 1985 SC 1281

7 MANU/MP/0049/1991

**IN THE HIGH COURT FOR THE STATE OF TELANGANA**  
**HYDERABAD**

\* \* \* \*

**CIVIL MISCELLANEOUS APPEAL No.1639 OF 2008**

Between:

The New India Assurance Company Limited.

...Appellant

vs.

Gundlapally Balreddy and another.

... Respondents

JUDGMENT PRONOUNCED ON: 08.02.2023

THE HON'BLE SRI JUSTICE M.LAXMAN

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be  
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? :

**M.LAXMAN, J**

**THE HON'BLE SRI JUSTICE M.LAXMAN**  
**CIVIL MISCELLANEOUS APPEAL No.1639 OF 2008**

**JUDGMENT:**

1. The present Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 20.06.2008, in W.C.No.5 of 2005, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar [for short "Commissioner"], whereunder the claim of respondent No.1 herein was partly allowed granting the compensation of Rs.2,64,930/-.

2. There is no dispute with regard to the accident and also injuries sustained by respondent No.1 herein in the accident. As per Ex.A2/wound certificate, respondent No.1 sustained three injuries, out of which, one is grievous in nature, which is on the upper side of right hand and other two injuries are simple in nature. AW2/doctor has assessed physical disability at 30% and the Commissioner took loss of earning disability at 75% for calculation of monitory benefits.

3. Heard the learned counsel on either sides and perused the material placed on record.

4. The contention of the learned standing counsel appearing for the appellant herein/Insurance Company is that the disability certificate issued by AW2/doctor is not scientifically proved and there is a vague statement in the certificate that there was malunion of right arm and doctor has assessed disability at 30%. It is also his contention that the evidence of the appellant herein/Insurance Company clearly shows that subsequent to the accident, there was a renewal of licence under Exs.D1 and D2. When there is renewal, it is clearly proved that there is no disability sustained by respondent No.1 and he was fit to drive the vehicle. This evidence was not considered by the trial Court.

5. The learned counsel representing respondent No.1/injured has contended that Ex.A2/wound certificate and the disability certificate issued by the doctor clearly demonstrate that there is a grievous injury to the right arm on the upper side and such fracture injury was contributing factor for determination of physical disability at 30%. Respondent No.1 was the driver and he could not drive the vehicle with 30% disability of right arm. With regard to Exs.D1 and D2, he has contended that this was obtained basing on some wrong advise and there is no clear examination of the doctor, who issued fitness for the driving license, to show that respondent No.1 was physically fit to drive

the vehicle. Such a renewal cannot be basis to contend that there is no disability.

6. In the light of the aforesaid contentions, the following substantial questions of law fall for consideration:

*“1. Whether findings of the Commissioner in determining the loss of earning disability at 75% vis-a-vis physical disability at 30% suffer from any perversity?”*

*2. Whether the trial Court can award a statutory interest in favour of respondent No.1 in the absence of any appeal or cross appeal or cross objections in the appeal filed by the insurer.”*

7. Ex.A2/would certificate shows that respondent No.1 suffered three injuries, out of which, one of the injury is grievous in nature. Such injury is on the upper side of the right arm. X-ray was taken into consideration while determining the physical disability of the right arm. As per doctor, on examination of X-rays, there were findings of malunion. Though the disability certificate issued by the doctor is not clear whether the malunion is at the shoulder or at the scapular or at the middle of the hand, the fact is that there is a grievous injury on the upper side of the right hand which is humongous. Malunion whether in the middle joint of the hand or upper shoulder, it definitely restricts the movement of the hand. This will have the some impact on the driving skills of the injured. Hence, the assessment of physical disability at 30%

cannot found fault with. However, the driving licence obtained by respondent No.1 clearly demonstrates that he could still able to drive the vehicle.

8. The Commissioner has not considered Exs.D1 and D2 in right perspective in assessing the loss of earning disability of respondent No.1. Earning disability determined by the Commissioner is not inconsonance with the medical evidence on record and the injury suffered by respondent No.1 herein. This Court feels that finding of the Commissioner with regard to fixing earning disability at 75% was not correctly done. Such finding suffers from perversity.

9. This Court finds that the physical disability of 30% would have only impact of 50% on the loss of earning disability instead of 75%. To that extent, the order of the Commissioner requires interference. Accordingly, compensation granted by the Commissioner is modified as under:

$$\text{Rs.}2976 \times (60/100) \times (50/100) \times 197.06 = \text{Rs.}1,75,935.168.$$

10. The contention of the learned counsel for the appellant herein/Insurance Company is that the Commissioner has granted interest at the rate of 9% per annum in the event of Insurance Company/appellant herein failed to deposit the fixed

compensation within the time fixed by the Commissioner, but the claimant has not challenged the restriction of interest from the date of default. Therefore, such interest cannot be granted.

11. Further, the learned counsel for the appellant herein/Insurance Company, in support of his contentions, has relied upon the decision of the Apex Court in the case of ***Ranjana Prakash Vs. Divisional Manager<sup>1</sup>***.

12. The contention of the learned counsel for respondent No.1 herein/claimant is that payment of interest is a statutory obligation under the Workmen's Compensation Act, 1929 (for short, "the Act"). Once the determination of compensation is made, the interest automatically follows and such interest has to be paid if the compensation is not paid within one month from the date, it becomes due i.e., 30 days from the date of accident. Admittedly, according to the learned counsel for respondent No.1 herein/claimant, the compensation was not paid within one month from the date of accident and interest at the rate of 12% is bound to be paid by the appellant herein/Insurance Company. The Commissioner has committed jurisdictional error in ignoring the statutory provision, which mandates for grant of interest

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<sup>1</sup>2011 (14) SCC 639

anterior to the date of application. Such a jurisdictional error can be rectified by exercising powers under Order 41 Rule 33 of CPC in spite of no cross appeal from the claimants.

13. The learned counsel for respondent No.1/claimant has relied upon the decision of the Apex Court in the case of **Surekha Vs. Santosh**<sup>2</sup>, to contend that in an appeal filed by the insurance company even though there is no cross appeal, claimants were granted enhanced compensation.

14. In the light of the said contention, it is apt to refer to Section 4(A) of the Workmen's Compensation Act (for short "the Act"), which reads as under:

*"Section 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 workman, as the case may be, without prejudice to the right of the workman to make any further claim.*

*(3) 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—*

*(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*

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<sup>2</sup> 2020 SCC Online SC 1312



*(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).”*

15. A reading of Sub-Section 1 of Section 4(A) of the Act, it is mandate that the compensation fixed under Section 4 of the Act, shall be paid as soon as falls due. Sub-Section 2 of Section 4(A) of the Act, makes it clear that if the employer does not accept the extent of compensation claimed by the workman, the employer shall provisionally make a payment based on his own assessment of compensation and shall deposit such a provisional amount with the Commissioner without prejudice to the right of workman to make further claim. Sub-Section 3 of Section 4(A) of the Act says that if the employer is in default in payment of compensation within one month from the date it fall due, the employer is liable to pay simple interest at the rate of 12% per annum or at such a higher rate not exceeding maximum of lending rates of scheduled bank. Further, it also enables the Commissioner to impose penalty if there is a delay in payment of arrears and interest thereon not exceeding 50% of such amount.

16. The Apex Court had an occasion to consider the word “fall due” and it has been held that the word “fall due” means the date on which one month time is lapsed from the date of accident. If the amount is not deposited within one month, then the amount become due and such amount shall be paid with interest. Apart from interest, if there is delay in payment of arrears of compensation and interest, the commissioner is empowered to impose penalty, the statutory mandate payment of prescribed interest if there is default in payment of compensation. This payment of interest is automatic.

17. In the present case, the Commissioner has fixed the compensation and directed to deposit the awarded amount within stipulated time and if the compensation is not deposited within the stipulated time, he ordered the payment of interest at the rate of 9 % per annum from the date filing of the application till the date of realization. Such order of the Commissioner is contrary to the statutory mandate contained under Section 4(A) of the Workmen Compensation Act. Admittedly, in the present case, respondent No.1 herein/claimant has not preferred any appeal or cross appeal or cross objection with regard to improper grant of interest.

18. Now the question is whether this Court can grant statutory interest in the absence of appeal or cross appeal or cross objections from respondent No.1/claimant.

19. The learned counsel the Insurance Company has strongly relied upon the ***Ranjana Prakash's case (Supra)***, whereunder the Apex Court held as follows:

*“8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.”*

20. A reading of the above judgment it is made clear that the Appellate Court cannot award more compensation in the appeal filed by the Insurance Company/Owner or reduce the compensation in the appeal filed by the claimants. This case has not dealt with the statutory right of a claimant to claim interest. In this regard, it is also relevant to refer Order 41 Rule 33 of CPC, which reads as follows:

**“33. Power of Court of Appeal:-** *The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.*

*[Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]*

21. A reading of the above provision it has given very wide powers to enable the Appellate Court to use such a power in favour of a party, who has neither appealed nor filed cross objections in order to prevent the justice being defeated.

22. Dealing with the appeal under Motor Vehicle Act in the absence of specific provisions under the Motor Vehicle Act enabling the party to file cross appeal, the Apex Court in the cases of **Pannalal Vs. State of Bombay**<sup>3</sup> and **Nirmala Bala Vs. Balai Chand**<sup>4</sup>, has held that even though no cross appeal is provided under the Motor vehicles Act, the powers conferred under Order 41 Rule 22 of CPC for cross appeal can be invoked and cross appeal is maintainable.

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<sup>3</sup> MANU/SC/0240/1963 : AIR 1963 SC 1516

<sup>4</sup> MANU/SC/0346/1965

23. The Apex Court in case of ***Giani Ram & Ors vs Ramji Lal & Ors***<sup>5</sup> has dealt with the power of the Appellate Court under Order 41 Rule 33 of CPC and emphasized exercise of such a power in order to prevent great injustice and if such powers are not exercised, the Courts would be perpetuating the great injustice.

24. The Apex Court in dealing with the appeal of the owner in the case ***Narcinva V. Kamat And Another Etc Vs. Alfred Antonio Doe Martins And Others***<sup>6</sup> has fixed liability on the insurer and also granted interest in the absence of any appeal from the claimants/respondents.

25. The High Court of Madhya Pradesh (Gwalior Bench) in the case of ***Prakramchand Vs. Chuttan and others***<sup>7</sup> has held that in the absence of any appeal from the respondents, the Court can grant interest on the awarded compensation.

26. All these cases pertaining to the case where there is no statutory mandate to pay any fixed interest. Whereas, in the present case there is a minimum fixed interest of 12% per annum and such interest has to be paid from the date it becomes fall due

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<sup>5</sup> AIR 1969 SC 1144

<sup>6</sup> AIR 1985 SC 1281

<sup>7</sup> MANU/MP/0049/1991

i.e., 31st day from the date of accident. The said payment of interest is automatic upon fixation of compensation. Therefore, the denial of interest, which is statutorily requirement, in favour of the claimants in the appeal filed by the insurer tantamount to perpetuating the injustice. Therefore, this Court is inclined to invoke the powers under Order 41 Rule 33 of CPC to grant statutory interest, which was ignored by the Commissioner. Accordingly, substantial question of law No.2 is answered.

27. In the result, this Civil Miscellaneous Appeal is partly allowed as follows:

- (i). The compensation awarded by the Commissioner is reduced from Rs.2,63,902.00 to Rs.1,75,935.168.
- (ii). The appellant/Insurance Company is directed to pay the reduced amount of Rs.1,75,935.168 along with interest at the rate of 9% per annum from the 31st day of accident till the date of realization.

No costs. As a sequel, miscellaneous petition pending, if any, shall stand closed.

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**JUSTICE M.LAXMAN**

08.02.2023

***Note: LR copy to be marked.***

B/o. Dua

**THE HON'BLE SRI JUSTICE M.LAXMAN**

**CIVIL MISCELLANEOUS APPEAL No.1639 OF 2008**

**08.02.2023**

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