

(2025) 12 DEL CK 0016

Delhi HC

Case No: FAO No. 118 Of 2020, Civil Miscellaneous Application Nos. 9386, 9387, 28629 Of 2020 & 9022 Of 2021

Divisional Railway Manager

APPELLANT

Vs

Kanchan Tiwari

RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Code of Civil Procedure, 1908- Section 151, Order 41 Rule 22, Order 41 Rule 33
- Employees' Compensation Act, 1923- Section 4A(3), 4A(3)(b), 30, 32(2)

Hon'ble Judges: Chandrasekharan Sudha, J

Bench: Single Bench

Advocate: Vikrant N. Goyal, Harsh Kumar Singh, Piyush Wadhwa, Yash, Akhil Sachar, Babita Rawat, G. Arora

Final Decision: Allowed

Judgement

Chandrasekharan Sudha, J.

1. This Appeal under Section 30 of the Employees' Compensation Act, 1923 (the EC Act) has been filed by the respondent in an Application under Section 4A(3)(b) of the EC Act, aggrieved by the order dated 23.05.2019 passed by the Commissioner, Employees' Compensation, Labour Department, whereby the respondent has been directed to pay interest of ■ 2,39,138/-along with penalty @ 30% amounting to ■1,28,142/- for the delay in depositing the compensation amount payable to the deceased's family member, i.e., his widow and son.

2. In this appeal, unless otherwise specified, the parties will be specified to as described in the original proceedings.

3. The facts of the present case originate from the demise of Shri Himanshu Tripathi, on 20.09.2009 who was employed with the respondent, Northern Railway, Indian Railways, as Signal Khalasi. He passed away due to an accident resulting in severe head injury while he was travelling from Talhari Bujurg to Rohana Kala Station during the course of his official duty. The joint inspection report dated 29.12.2013, prepared and signed by the authorised officials of the respondent confirmed that the deceased fell from a running train resulting in his death.

4. On 14.01.2016, the respondent deposited a sum of ■4,27,140/-through cheque bearing No. 647704 dated 17.12.2015 towards death compensation. The said amount

was deposited without any interest for the delay in the payment of compensation. Upon such deposit, the Commissioner disbursed the aforesaid amount to the family of the deceased vide disbursement order dated 02.02.2016.

5. Pursuant to the aforesaid events, the wife of the deceased filed a claim application on 24.10.2017 before the Commissioner, seeking, inter alia, a direction to the respondent for payment of arrears of simple interest at the rate of 12% for the delay in depositing the compensation, penalty not exceeding 50%, funeral expenses, and further interest till the final deposit.

6. Upon receipt of the application, the learned Commissioner issued a show cause notice dated 19.12.2017 to the respondent, directing them to explain why maximum penalty @ 50% should not be imposed upon them.

7. The respondent, inter alia, contended that the widow of the deceased had been provided compassionate appointment and that the compensation amount had been duly deposited with the Commissioner and that it was subsequently released to the family of the deceased by the Labour Department. It was also contended that apart from the statutory compensation, an additional sum of ₹10,00,000/- was also paid as ex-gratia. The delay in releasing the compensation amount from 12.02.2014 to 14.01.2016 was attributed to procedural reasons, asserting also that the deceased was not covered under the EC Act.

8. Upon consideration of the submissions of both sides and the documents placed on record, the learned Commissioner found that the claimants were entitled to compensation and that there was clear delay on the part of the respondent in depositing the compensation amount. Accordingly, the Commissioner concluded that the respondent was liable to pay interest @ 12 % on the principal amount. With respect to the date from which interest is to be computed, it was held that the interest be calculated with effect from December 2013. The interest was directed to be computed up to 30.08.2018, being the date on which the proceedings were concluded, in other words, from December, 2013 to 30.08.2018. Accordingly, the total interest liability was assessed at ₹2,39,198/-

9. Regarding the penalty, the learned Commissioner adopted a lenient approach, acknowledging the procedural delays inherent in the government sector and considering the fact that the respondent had already disbursed an ex-gratia payment of ₹10 Lakhs. Consequently, a penalty of 30% on the principal amount, calculated at ₹1,28,142/-, was imposed and the respondent was directed to deposit a total sum of ₹3,67,340/- (comprising both interest and penalty) within 30 days of the said order.

10. The respondent filed a review application under Section 32(2) of the EC Act, challenging the impugned order dated 23.05.2019. However, the review application was dismissed vide order dated 07.11.2019.

11. Aggrieved by the directions contained in the impugned order dated 23.05.2019, the respondent has preferred the present appeal, wherein it is, inter alia, alleged that the computation of interest liability for the period from December 2013 till 30.08.2018 is wholly erroneous, since the respondent had already deposited the compensation amount on 14.01.2016.

12. The Claimant has filed CM Application No. 9022 of 2021 under Order XLI Rule 22 read with Section 151 of the Code of Civil Procedure, 1908 by placing reliance on the judgment in North East Karnataka State Road Transport Corporation v. Sujatha, (2019) 11 SCC 514, contending that the interest ought to have been computed from the date of death of the deceased employee, i.e., 20.09.2009, rather than from 29.12.2013, being the date on which the joint inspection report was submitted declaring the death to be accidental.

12.1. When questioned on the maintainability of seeking such reliefs by way of an application, instead of filing a cross appeal against the impugned order dated 23.05.2019, the respondent sought to justify the course adopted and placed reliance upon the judgments Delhi Electric Supply Undertaking v. Basanti Devi, (1999) 8 SCC 229, Sushila Giri v. Nitish Kaushik, 2018 SCC OnLine Del 7080, M.C. Luthra v. Ashok Kumar Khanna, 2018 SCC OnLine Del 7462.

13. Both sides were heard.

14. It is submitted by the learned counsel for the respondent that the sole question that now arises for determination is whether the interest liability for the deposit of compensation is to be computed till the conclusion of the proceedings before the learned Commissioner, i.e., 30.08.2018 or till the date on which the compensation was actually deposited, i.e., 14.01.2016.

15. Sub-section 3 of Section 4A of the EC act, 1923 reads :

"4-A. Compensation to be paid when due and penalty for default:-

"XXXXXX

(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

(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.

XXXXXX"

(Emphasis supplied)

16. A plain reading of sub section 3 of Section 4A of the EC Act, unequivocally establishes that any default by the employer in paying compensation within the statutory period of one month mandates the Commissioner to impose simple interest at 12 percent per annum and to levy penalty as warranted. It further stands settled that the employer's liability to pay interest arises strictly on the compensation that remains due, and the moment any part of the compensation is paid, the interest liability to that extent automatically extinguishes from the date of such payment. In other words, as soon as a payment is made against the compensation due, the corresponding interest liability ceases.

17. In the case on hand, the learned Commissioner, without giving any reasons, has directed that the interest be computed up to the conclusion of the proceedings on 30.08.2018, which is significantly later than the date on which the due compensation amount had already been deposited by the respondent viz., 14.01.2016.

18. Such a determination cannot be sustained either in law or on a proper construction of sub section 3 of Section 4A of the EC Act. Therefore, the conclusion of the learned Commissioner that the respondent is liable to pay interest @ 12 % per annum on the compensation amount from 29.12.2013 till 30.08.2018, being the date on which the proceedings concluded, is wholly untenable and is liable to be set aside. The liability to pay interest could extend only up to the date of deposit of the compensation, which in the present case was effected on 14.01.2016.

19. In addition to the above, the further question raised by the claimant for determination is whether the interest liability on the compensation ought to arise from the date of the accident, i.e., 20.09.2009, rather than from 29.12.2013, the date on which the joint inspection report was submitted and through which the respondent first became aware of the accidental nature of the death.

20. It is a well settled principle that interest on compensation is payable from the date of the accident and not from the date of adjudication, as held in *Ajaya Kumar Das v. Divisional Manager*, 2022 SCC OnLine SC 93. But no cross appeal/objection has been filed by the claimant.

21. The learned counsel for the claimant placed reliance upon the dictums in *Delhi Electric Supply Undertaking v. Basanti Devi*, (1999) 8 SCC 229, *Sushila Giri v. Nitish Kaushik*, 2018 SCC OnLine Del 7080, and *M.C. Luthra v. Ashok Kumar Khanna*, 2018 SCC OnLine Del 7462, to canvass the point that to do complete justice to the party, Order XLI Rule 33 CPC can be invoked by this court and interest be awarded from the date of accident. It is true that no cross appeal/objection has been filed by the claimants. But the case on hand appears to be a case in which the discretionary powers of the court under Order XLI Rule 33 of the CPC can be invoked. Hence, I find that the claimants are entitled to interest from the date of accident.

22. In light of the afore said reasons, the appeal is allowed only to the limited extent of correcting the computation of interest liability, which shall be the period from the date of the accident, i.e., 20.09.2009 until 14.01.2016, being the date on which the appellant deposited the compensation amount due. Needless to say, the direction relating to penalty as awarded by the learned Commissioner remains unchanged.

23. Applications, if any, pending shall stand closed.