

(2000) 02 PAT CK 0162**Patna High Court****Case No:** M.A. No. 210 of 1996

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Manjeet Kaur and Others

RESPONDENT

Date of Decision: Feb. 4, 2000**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 166
- Workmens Compensation Act, 1923 - Section 30, 4A

Citation: (2000) 4 PLJR 225**Hon'ble Judges:** Gurusharan Sharma, J**Bench:** Single Bench**Advocate:** Ajay Kumar, for the Appellant; Yogesh Chandra Verma and Umakant Prasad No. 1., for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

Gurusharan Sharma, J.

Heard counsel for the appellant and respondents 1 and 2. Inspite of service of notice, respondent no. 3 did not appear Perused Lower Court Records. Admittedly, on 12.4.1991, Harpal Singh died in a motor accident. He was employed as driver on a truck, bearing registration no. DL-1G-0545 and was on duty at the time of accident. The said truck belonged to Hari Roadways (India) and Smt. Veena Bhalla was its proprietor The truck was insured with the Oriental Insurance Company Ltd.

2. Parents of deceased Harpal Singh filed C.W. Case No. 22 of 1992 under the provisions of Workmen's Compensation Act, 1923 (hereinafter referred to as the Act), wherein on the basis of materials brought on record, it was established that deceased Harpal Singh was an employee of Hari Roadways (India) Delhi. He was 26 years old and was earning Rs. 2700/ per month. He died while on duty. A sum of Rs. 86,112/- was assessed as compensation payable to the claimants under the Act and by impugned order dated 27.3.1996, passed by Deputy Labour

Commissioner-cum-Commissioner Workmen's Compensation Magadh Division, Gaya, direction was also given for payment of 10% interest per annum in case compensation amount was not deposited by 30.4.1996. The present appeal u/s 30 of the Act has been filed by the Insurance Company challenging the said order.

3. Mr. Ajay Kumar, Counsel for the appellant submitted the driving licence of deceased Harpal Singh was a fake one and as such terms of Insurance policy was violated and so appellant was not responsible for identifying the liability of owner of the truck. It was further submitted that direction to the insurer to pay 10% interest in case compensation amount fixed under the Act was not deposited by it within the stipulated time, was illegal and without jurisdiction.

4. It is not in dispute that deceased was employed with Hari Roadways (India), Delhi and was a "Workman" within the meaning of the Act and he died in course of his duty. The aforesaid two conditions having been fulfilled, provisions of the Act were applicable and the question whether the deceased was possessing a valid driving licence or not was not material for the present purpose. This aspect of the matter was relevant in case parents of deceased would have gone for claim u/s 166 of the Motor Vehicles Act, 1988, which was also available to them. I, therefore, find no substance in the first submission of Mr. Kumar.

5. However, I find substance in the second submission. The law appears to be settled in this regard.

There is provision for grant of interest u/s 4A of the Act where any employer is found in default in paying the compensation due under the Act within one month from the date it fell due. For that purpose the Workmen Compensation Commissioner is required to pass a separate order for payment of penalty and interest after compensation under the Act payable to the claimant is already determined. I do not find that any such order u/s 4A has been passed in the present case. In the operative part of impugned order the Commissioner has directed the Insurance Company-appellant to deposit the entire compensation amount in court till 30th April 1996, failing which the said amount with interest @ 10% shall be realised by Certificate Proceeding. There is no such provision in the Act for awarding interest. However, it appears that the Commissioner in order to put pressure upon the Insurance company so that the compensation amount may be deposited forthwith awarded aforesaid interest, which is set aside. It appears that in order to prefer the present appeal u/s 30 of the Act, Insurance company has already deposited the entire compensation amount with interest total Rs. 1,15,013- 00 in the court below on 8.9.1999. However, in view of the fact that the impugned order granting interest has been set aside, the Insurance company shall be entitled to get refund of the amount of interest, besides the actual compensation amount deposited on 8.9.1999 and the claimant shall be entitled to withdraw the compensation amount on proper verification and in accordance with law.

This appeal is, accordingly, disposed of with the aforesaid modification in the impugned judgment and award.