

## United India Insurance Co. Ltd. Vs Kartick Chandra Mandal and Another

**Court:** Calcutta High Court

**Date of Decision:** April 4, 2003

**Acts Referred:** Limitation Act, 1963 " Section 5  
Workmens Compensation Act, 1923 " Section 30(3), 4(1), 4A(3)

**Citation:** (2004) 2 ACC 306 : (2004) ACJ 304

**Hon'ble Judges:** Samarash Banerjee, J; Indira Banerjee, J

**Bench:** Division Bench

**Advocate:** Kamal Krishna Das, for the Appellant; Saidur Rahaman and Hafizul Haque, for the Respondent

### Judgement

S. Banerjee and I. Banerjee, JJ.

This is an application u/s 5 of the Limitation Act for condonation of delay of 40 days in preferring the appeal.

2. After hearing the learned advocates for both the parties and considering the application, it appears that the inability of the appellant to prefer the

appeal within the prescribed period of limitation was not because of any laches or negligence on his part but because of the circumstances beyond

his control. It appears to this court that the learned advocate appearing for the appellant who was dealing with the matter became sick as a result

whereof he was unable to prefer the appeal within time. We are, therefore, of the view that the appellant was prevented by sufficient cause in

preferring the appeal within the prescribed period of limitation.

3. This application is, therefore, allowed. The delay in preferring the appeal is hereby condoned. Let the appeal now be registered.

4. Since the learned advocates for both the parties submit before us that there is a very short point involved in this appeal which can be disposed of

without the trial court records, by consent of the parties the appeal itself is treated as on day's list and is taken up for hearing after dispensing with

all formalities.

5. The Workmen's Compensation Court, after considering all aspects of the matter, has awarded a sum of Rs. 1,12,140 as compensation. The

only point which has been urged by Mr. Das, learned counsel appearing on behalf of the appellant is that the learned Commissioner fell into error in

applying the provisions of the amended provisions of the Workmen's Compensation Act, which admittedly came into force on 15.9.1995 when

admittedly the accident occurred prior thereto, i.e., on 1.7.1993.

6. After hearing the learned advocates for the parties and considering the entire aspect of the matter, it appears to us that the submission made by

Mr. Das is correct.

7. Although the learned Commissioner has applied the amended provisions of the said Act relying upon the judgment of the Kerala High Court in

Oriental Insurance Company Ltd. Vs. Asokan, , such decision of the Kerala High Court is no longer a good law in view of the decision of the

Apex Court, namely, Kerala State Electricity Board and Another Vs. Valsala K and Another, . In fact, a two-Judge Bench of the Apex Court in

case of New India Assurance Co. Ltd. v. V.K. Neela-kandan, Civil Appeal Nos. 16904-16906 of 1996 took the view that the Workmen's

Compensation Act, being a special legislation for the benefit of the workmen, the benefit as available on the date of adjudication should be

extended to the workman and, therefore, the amended provisions of the Act should be extended to the workmen.

8. In the aforesaid case of Kerala State Electricity Board and Another Vs. Valsala K and Another, three-Judge Bench of the Supreme Court held

that the aforesaid two-Judge Bench in the case of New India Assurance Co. Ltd., C.A. Nos. 16904-16906 of 1996, did not notice a four-Judge

Bench judgment of the Apex Court in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, where it was held that an employer

becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course

of employment. Such being the position of law, the question whether the amended provisions of the Act will be applicable in a case of such

accident when, admittedly, the same took place even before the amended provisions came into operation is no more res integra. The judgment and

award of the learned Commissioner is liable to be set aside on such ground alone.

9. For the reasons stated above, this appeal succeeds. The impugned judgment and award of the Workmen's Compensation Court is hereby set

aside. The matter is sent back to the said court for reassessment of the compensation on the basis of the Workmen's Compensation Act as it

stood prior to the amendment, i.e., prior to 15.9.1995.

10. Since it appears to this court that the matter is an old one, we direct the Workmen's Compensation Court, West Bengal, to dispose of the

matter with the utmost expedition and positively within 15.4.2002 without granting any adjournment to any of the parties.

11. It is, however, made clear that we are of the view that the workman is entitled to interest on the compensation from the date of the application

at the rate of 12 per cent per annum and the said court will pass such order accordingly.

12. It may be recorded that Mr. Das relying on Section 4-A(3) of Workmen's Compensation Act, 1923, has submitted that the Commissioner

cannot direct payment of interest more than 6 per cent per annum. We are of the view that the aforesaid provisions u/s 4-A(3) of the Act does not

take away the power of the High Court in appeal to grant interest for the purpose of compensating the workman, admittedly, when the liability of

the employer arises from the date of the accident and fact remains whatever may be the reasons till date the workman has not received such

amount which was due to him. After payment of compensation the learned Commissioner of the Workmen's Compensation Court will refund the

excess amount, if any, to the appellant.

13. In view of our order as aforesaid, the stay application also stands disposed of. There will be no order as to costs.

14. Let a copy of this judgment be sent down forthwith to the Workmen's Compensation Court by the Registry of this court.

28.2.2002

15. After hearing the parties on the question of condonation of the delay on 12.2.2002 and after condoning the delay we also heard out the appeal

and disposed of the same by remanding the matter back to the Workmen's Compensation Court, West Bengal for disposal of the matter in terms

of our judgment. While doing so, we also directed, inter alia, that the Workmen's Compensation Court will direct interest at the rate of 12 per

cent. In passing such direction, we did not accept the submission of Mr. Das, appearing for the appellant, that in view of the provisions contained

in Section 4-A(3) of the Workmen's Compensation Act, 1923, not more than 6 per cent interest can be paid. In our view, such provision cannot

take away the power of the court to direct payment of such interest. Subsequently, before we signed the judgment, Mr. Das, appearing for the

appellant, mentioned before this court for hearing him further on such point and for considering the decision of the Supreme Court in the case of

Ved Prakash Garg Vs. Premi Devi and others, Accordingly, the matter was ordered to be listed today as "for orders".

16. Today, relying on the said decision of the Apex Court, it has been submitted that more than 6 per cent interest cannot be directed to be paid.

17. We have heard the learned advocates for both the parties on such point. Let the matter appear "for judgment" on Thursday next week

(14.3.2002).

4.4.2003

18. After condonation of delay by consent of parties on 12.2.2002, we heard the appeal and disposed of the same by delivering a judgment,

remanding the matter back to the Workmen's Compensation Court for disposal of the matter in terms of our judgment.

19. While doing so we also directed that since the liability to compensate will arise from the date of accident and so long the workmen have

suffered for not getting the compensation, the Workmen's Compensation Court will direct payment of interest at the rate of 12 per cent.

20. By passing such direction we did not accept the submission of Mr. K.K. Das appearing for the appellant, that in view of the provisions

contained in Section 4-A(3) of the Workmen's Compensation Act, 1923, not more than 6 per cent interest can be paid. In the said judgment we

expressed the view that such provision cannot take away the power of the High Court to direct payment of such interest.

21. But before signing the judgment Mr. Das in support of his contention that not more than 6 per cent interest can be directed to be paid by the

Commissioner, produced the judgment of the Supreme Court in the case of Ved Prakash Garg Vs. Premi Devi and others, and we heard the

parties also on such decision. But we could not pass any order subsequently because the Bench broke and determination changed and we could

not reassemble earlier for passing the order in the present case.

22. We, therefore, now pass our order today. After going through the judgment of the Supreme Court in the case of Ved Prakash Garg Vs. Premi

Devi and others, it appears to us that the question whether the High Court can direct payment of further interest in addition to the amount the

Commissioner can pay u/s 4-A(3) of the Act was never an issue before the Supreme Court.

23. The concerned workman was a truck driver and died in the accident which occurred on 30.6.1993. But after even lapse of 9 years the widow

of the deceased workman has not obtained any amount of compensation.

24. The widow of the deceased workman cannot also be paid the workmen's compensation under the amended provisions of Act, the accident

having occurred prior to coming into operation of the amended provisions of the Act.

25. The result is for more than 9 years the widow has been deprived of the compensation whatever might have been the amount.

26. The Workmen's Compensation Act is also a welfare legislation and in our view it will be a travesty of justice if we do not direct payment of

further interest in addition to the amount which the Commissioner is entitled to award u/s 4-A(3) of the said Act to ameliorate the hardship suffered

by the widow of the deceased to some extent.

27. But since it appears to us our aforesaid direction in the said judgment created some confusion as to the power of the court u/s 4-A(3) of the

Act, we modify our aforesaid judgment and order dated 12.2.2002 by directing after assessment of compensation to the claimant the learned

Commissioner shall direct the payment of further 6 per cent interest on such amount of compensation from the date of the application under the

order of the High Court.

28. We further modify our aforesaid judgment and order directing that the Workmen's Compensation Court, West Bengal, shall dispose of the

matter positively within 15.5.2003 without granting any unnecessary adjournments to any of the parties.

29. So urgent xerox certified copy of this order be given to the learned advocates for the respective parties as early as possible.