Supreme Court of India
Oriental Insurance Co. Ltd vs Mohd. Nasir & Anr on 12 May, 2009
Author: S Sinha
Bench: S.B. Sinha, Mukundakam Sharma

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3486 OF 2009
(Arising out of SLP (C) No.11215 of 2006)

Oriental Insurance Co. Ltd. ... Appellants

Versus

Mohd. Nasir & Anr. ... Respondents

WITH
CIVIL APPEAL NOS. 3495,3496,3497 and 3484
OF 2009
(Arising out of SLP (C) No.16171, 21012 of 2006, 74 of 2007
2

and 2854 of 2008)

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Applicability of the respective provisions of the Workmen Compensation Act, 1923 (1923 Act) and Motor Vehicles Act, 1988 (1988 Act) in respect of the claimants who had suffered disability is the question involved in this appeal.

3. The factual matrix involved in these cases would be noticed by us separately.

SLP (C) NO.11215 OF 2006 First respondent in this appeal was the driver of a truck bearing registration No.UP-21-9636. Respondent No.2 was its owner. An accident took place on 2.10.2004 wherein first respondent suffered an injury in his right leg besides others. He filed an application for award of compensation in terms of the provisions of the 1923 Act before the Commissioner of

Workmen Compensation, Moradabad claiming a sum of Rs.1,50,000/- with interest. The Commissioner opined that although the workmen had suffered 15% disability but loss of his earning capacity was 100%. Noticing that he was aged about 35 years and his salary was Rs. 3,200/- per month, a sum of Rs. 3,78,355.20 was awarded with interest at the rate of 12% per annum from the date of accident till payment.

The High Court dismissed the appeal in limine. SLP (C) NO.16171 OF 2006 Respondent No.1 was a cleaner in a truck. It collided with a tanker on 17.7.2002 resulting in fracture of his femur right thigh. Respondent No.1 was hospitalized from 19.7.2002 to 7.8.2002. He filed claim petition under the 1923 Act for a sum of Rs.3,00,000/-.

By an order dated 8.9.2003, the Commissioner awarded a sum of Rs.93,302/- on the premise that he was aged 22 years and his income was Rs.2003/- per month. Although the disability was determined at 20% to 25%, the loss of earning capacity was determined at 35%. The doctor who had treated him, in his deposition, stated that disability of the first respondent was between 20% to 25%.

The High Court, by reason of its impugned judgment dated 14.6.2006 determined his loss of earning capacity at 60% and the amount of compensation, on the said premise, was enhanced to Rs.2,65,865.37. SLP (C) NO.21012 OF 2006 First respondent was hired as a casual labour for loading and unloading. The truck in which he was working collided with a stationary lorry as a result whereof he sustained injuries. He filed claim petition under the 1923 Act claiming a sum of Rs.1,50,000/- before the Commissioner. The Commissioner, by an order dated 29.4.2004 assessed his disability at 40%. However, the loss of earning capacity was taken to be 80%. An amount of Rs.2,17,169.83 was awarded as compensation.

An appeal preferred by the insurance company thereagianst has been dismissed by the High Court in terms of the impugned judgment. SLP (C) NO.74 OF 2007 Respondent Nos. 1 and 2 were engaged for loading and unloading broken rice on casual basis in a lorry which collided with a stationary lorry resulting in sustaining injuries to respondent No.1. He filed an application before the Workmen's Compensation Commissioner claiming an amount of Rs.3,00,000/- as compensation. His disability was assessed at 40% but loss of earning capacity was assessed at 80% by the doctor. The Commissioner, by an order dated 29.4.2004 assessed the disability of the respondents at 80% and loss of earning capacity at 100%. A sum of Rs.2,09,123/- was awarded.

By reason of the impugned judgment the High Court affirmed the award.

SLP (C) NO.2854 of 2008 Respondent No.1 on 31.5.1995 was traveling in an Ambassador car which collided with a bus as a result whereof he sustained injuries. He filed an application under Section 166 of the 1988 Act claiming a sum of Rs.18,00,000/- before the Motor Accident Claims Tribunal. He was aged about 65 years. He is a practicing advocate. By an award dated 21.2.2002, the Tribunal assessed the permanent disability suffered by him at 50%. A sum of Rs.1,95,000/- was awarded keeping in view the fact that he was unable to work for 39 months. A sum of Rs.50,000/- was also awarded towards future loss of income. In total, MACT awarded Rs.7,42,191/- with 9% interest per annum.

On an appeal preferred thereagainst, the High Court, by reason of the impugned judgment, enhanced the amount of compensation to Rs.12,37,191/- with 9% interest per annum.

4. The insurance company contends that its liability is only to the extent of percentage of disability of the person as provided by Section 4 of the 1923 Act and the interest becomes payable with effect from one month after the date of adjudication by the Commissioner.

It was also stated that the insurance company had not filed any appeal before the High Court in the case of K. Srinivas Murthy satisfying the award given by the Tribunal. The appellant has also deposited 50% of the amount of compensation enhanced by the High Court. It was prayed that the said amount may be directed to be recovered.

It is also contended that the amount of compensation could not have exceeded the amount claimed.

5. A question has been raised as to whether the percentage of loss of earning capacity and the physical disability shall be the same.

A question has furthermore been raised as regards applicability of the multiplier specified in the Second Schedule appended to the 1988 Act on the premise that the same would not be applicable in respect of the claim petition which is filed under Section 166 of the Act.

6. Before adverting to the questions raised before us, we may notice the statutory provisions contained in the 1923 Act and 1988 Act.

The 1923 Act was enacted to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

`Compensation' has been defined in Section 2(c) of the 1923 Act to mean `compensation as provided therein.

`Partial disability' has been defined in Section 2(g) as under :

> " `Partial disablement' means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time : provided that every injury specified (in Part II of Schedule I] shall be deemed to result in permanent partial disablement;"

`Qualified medical practitioner' has been defined in Section 2(i) to mean :

> " `qualified medical practitioner' means any person registered under any Central Act, Provincial Act, or an Act of the Legislature of a State providing for the maintenance of

> a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;"
>
> Section 3 provides for the employer's liability for compensation.

Section 4 deals with the amount of compensation, clauses (a), (b) and (c) of sub-section (1) whereof read as under :

> "a) Where death results an amount equal to fifty per cent of from the injury the monthly wages of the deceased workman multiplied by the relevant factor;
>
> or an amount of eighty thousand rupees, whichever is more;

(b) Where permanent an amount equal to sixty per cent of total disablement results the monthly wages of the injured from the injury workman multiplied by the relevant factor;

or an amount of ninety thousand rupees, whichever is more;

Explanation I.--For the purposes of clause (a) and clause (b) "relevant factor" in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

Explanation II.--Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only;

(c) Where permanent (i) in the case of an injury specified partial disablement in Part II of Schedule I, such result from the injury percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Explanation I.--Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II.--In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in

relation to different injuries specified in Schedule I."

We may notice that the First Schedule specified under Section 1(g) and Section 4 is in two parts. Part I specifies the list of injuries deemed to result in permanent total disablement and Part II specifies list of injuries deemed to result in permanent partial disablement. The note appended thereto reads as under :

> "Note.--Complete and permanent loss of the use of any limb or member referred to in the Schedule shall be deemed to be equivalent of the loss of that limb or member."

The Fourth Schedule appended to the 1923 Act provides for the factors for working out lump sum equivalent of compensation amount in case of permanent disablement and death.

7. The 1988 Act was enacted to consolidate and amend the law relating to motor vehicles. Chapter X provides for the liability without fault in certain cases. Subsection (1) of Section 140, Section 142 and Section 143 read as under :

> "140--Liability to pay compensation in certain cases on the principle of no fault--(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.
>
> XXX XXX XXX 142 - Permanent disablement--For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:-
>
> (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
>
> (b) destruction or permanent impairing of the powers of any member or joint; or
>
> (c) permanent disfiguration of the head or face.
>
> 143 - Applicability of Chapter to certain claims under Act 8 of 1923--The provisions of this Chapter shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923 resulting from an accident of the nature referred to in subsection (1) of section 140 and for this purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act."

Section 144 of the Act provides for a non obstante clause.

Chapter XI deals with insurance of motor vehicles against third party risks. Chapter XII of the Act provides for constitution of claims tribunal. Explanation appended to sub-section (1) of Section 165 provides that the expression `claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles' includes claims for compensation under section 140 and Section 163-A of the 1988 Act. The Second Schedule appended thereto framed in terms of Section 163-A thereof provides for compensation for third party fatal accidents/injury cases claims. It specifies the amount of compensation in case of death on the basis of income of the deceased as also the age group. It also provides for applicability of multiplier. The note appended thereto reads as under :

"5. Disability in non-fatal accidents :

The following compensation shall be payable in case of disability to the victim arising out of non- fatal accidents:

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following:--

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement /Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.

6. Notional income for compensation to those who had no income prior to accident.--

Fatal and disability in non-fatal accidents: --

(a) Non-earning persons	- Rs.15,000 p.a.
(b) Spouse	-- Rs. l/3rd of income of the earning/survivi ng spouse.

In case of other injuries only "general damage" as applicable."

8. Both, the 1923 Act and 1988 Act are beneficent legislation insofar as they provide for payment of compensation to the workmen employed by the employers and/or by use of motor vehicle by the owner thereof and/or the insurer to the claimants suffering permanent disability.

9. The amount of compensation is to be determined in terms of the provisions of the respective Acts. Whereas in terms of the 1923 Act, the Commissioner who is a quasi judicial authority, is bound to apply the principles and the factors laid down in the Act for the purpose of determining the compensation, Section 168 of the 1988 Act enjoins the Tribunal to make an award determining the amount of compensation which appears to be just.

10. Both the Acts aim at providing for expeditious relief to the victims of accident. In these cases, the accidents took place by reason of use of motor vehicles.

Both the statutes are beneficial ones for the workmen as also the third parties. The benefits thereof are available only to the persons specified under the Act besides under the Contract of Insurance.

The statutes, therefore, deserve liberal construction. The legislative intent contained therein is required to be interpreted with a view to give effect thereto.

11. With the aforementioned backdrop, we may analyse the contentions raised before us by the learned counsel for the parties.

Both the statutes provide for the mode and manner in which the percentage of laws of earning capacity is required to be calculated. They provide that the amount of compensation in cases of this nature would be directly relatable to the percentage of physical disability suffered by the injured vis-`-vis the injuries specified in the First Schedule of the 1923 Act. Indisputably where injuries are specified in the First Schedule, the mode and manner provided for the purpose of calculating the amount of compensation would be applicable.

12. The statutes provide for determination of the extent of physical disability suffered by a qualified medical practitioner so as to enable him to assess the loss of earning capacity. Explanation 1 appended to clause (c) of sub-section (1) of Section 4 provides that where there are more injuries than one, the aggregate amount of compensation has to be taken but the same should not exceed the amount which would have been payable in case of permanent total disablement.

It is also beyond any doubt or dispute that while determining the amount of loss of earning capacity, the Tribunal or the High Court must record reasons for arriving at their conclusion.

The 1923 Act which would also be the claims applications arising out of use of motor vehicles in terms of the provisions of 1988 Act would for the purpose of determination of the amount of compensation where the victim of the accident suffers from disability in the cases coming within the purview thereof. The Note appended to the Second Schedule of the 1988 Act raises a legal fiction, stating that `injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under the

Workmen's Compensation Act, 1923'. Permanent disability, therefore, for certain purposes have been co-related with functional disability.

13. As to what, therefore, in our opinion, would be relevant is to find out the nature of injuries and as to whether the same falls within the purview of Part I or Part II thereof. We have noticed hereinbefore that whereas Part I specifies the injuries which would deem to result in permanent total disablement, Part II specifies injuries which would be deemed to result in permanent partial disablement. The distinction between the `permanent total disablement' and `permanent partial disablement' is that whereas in the former it is 100% disablement, in the latter it is only the disablement to the extent specified in the Schedule.

14. Similar terms have been used in clauses (a) and (b) of paragraph 5 of the Second Schedule of the Motor Vehicles Act. It, by reference, incorporates the provisions of the First Schedule of the 1923 Act. Indisputably, therefore, the Note appended thereto would not only be applicable to the cases falling under the 1923 Act but apply to the cases which fall under the 1988 Act as well.

15. Our attention, however, has been drawn to a decision of this Court in National Insurance Co. Ltd. v. Mubasir Ahmed & Anr. [(2007) 2 SCC 349], wherein it was held :

> "8. Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning capacity. Since no basis was indicated in support of the conclusion, same cannot be maintained. Therefore, we set aside that part of the High Court's order and restore that of the Commissioner, in view of the facts situation. Coming to the question of liability to pay interest, Section 4-A(3) deals with that question. The provision has been quoted above."

16. In determining the amount of compensation, several factors are required to be taken into consideration having regard to the Note. Functional disability, thus, has a direct relationship with the loss of limb.

Mohd. Nasir was a driver. A driver of a vehicle must be able to make use of both his feet. It was the case of the claimant that he would not be in a position to drive the vehicle and furthermore would not be able to do any other work. He was incapable of taking load on his body. It, however, appears that in his cross-examination, he categorically stated that only Chief Medical Officer had checked him in his office. No disability certificate had been granted. He admitted that he had not suffered any permanent disability. He, even according to the Chief Medical Officer who had not been examined, suffered only 15% disability. The Tribunal has arrived at the following findings :

> "On page 16 original of disability certificate the prescription of medicine X-Ray report of Sarvodaya and of Mohan X-Rays have been produced which reveals the fracture of

> right leg. CMO certificate O/M 9/2003 dated 21.3.2005 has also been produced which is alleged to be false by insurance Co. I have perused them carefully which bears signature of Deputy CMO officer of disability Board, Moradabad had it shown that the applicant had appeared before them for medical check up and whose examination was done by senior orthopedics surgeon Dr. R.K. Singh on the basis of recommendation of Dr. Bansal operation was done on 2.10.2004 the applicant walk with the help of the support and is not competent to drive the heavy motor vehicle the said certificate was issued with recommendation that after six months his condition is to be reviewed.
>
> That document was filed on 29.3.2005. Insurance company has stated the doctor who has issued disability certificate has not been produced in the court. But looking into the aftermath situation the plea of insurance company that the said certificate is forged and the same has not been issued by any MBBS doctor, carries no force."

17. The learned Tribunal had held that there has been a 15% disability but then there was nothing to show that he suffered 100% loss of earning capacity. The Commissioner has applied the 197-06 as the relevant factor, his age being 35. He, therefore, proceeded on the basis that it was a case of permanent total disablement. However, his income was taken to be at Rs.1,920/- per month. There is nothing on record to show that the qualified medical practitioner opined that there was a permanent and complete loss of use of his right leg or that he became totally unfit to work as a driver. In that situation, the High Court, in our opinion, was not correct in determining the loss of income at 100%.

In Ramprasad Balmiki v. Anil Kumar Jain & Ors. [(2008) 9 SCC 492], wherein upon referring to the evidence of the Doctor who did not say that any permanent disability had been caused, this Court held :

> "Be that as it may, the High Court, in our opinion, correctly proceeded on the assumption that the extent of permanent disability suffered by the appellant is only 40% and not 100%."

We, therefore, are of the opinion that the extent of disability should have been determined at 15% and not 100%. The appeal is allowed to the aforementioned extent.

CA @ SLP (C) NO.16171 OF 2006

18. Shaik Baji was a cleaner of a truck. He suffered an injury on the leg. The disability was determined at 20% to 25%. The disablement was partial and not total. There was no basis for the High Court to assess the loss of earning capacity at 60%. Respondent No.1 being a cleaner, a frature in the leg suffered by him would not amount to loss of permanent use of the limb, i.e., the entire foot. The note appended to the Second Schedule, therefore, has no application.

Therefore, the judgment of the High Court is set aside and that of the Commissioner, Workmen Compensation is restored. Appeal is allowed accordingly.

CA @ SLP (C) NO.21012 OF 2006

19. Accident occurred in this case by reason of the use of a vehicle. Both the claimants were casual workmen. Whereas in the former case the disability was assessed at 40%, the loss of earning capacity was taken to be 80%. We do not know on what basis, the same was arrived at. According to the doctor, he suffered injury. The doctor having found the disability to the extent of 40% could not have determined the loss of earning capacity to 80%.

Therefore, the judgment and order of the High Court as well as the Commissioner to that extent cannot be sustained. It is set aside accordingly. Appeal is allowed and the amount of compensation may be calculated on the said basis.

CA @ SLP (C) NO.74 OF 2007

20. In this case, respondent No.1 was engaged as a casual labour for loading and unloading the broken rice from a lorry. The said lorry collided with a stationed lorry as a result whereof respondent No.1 received injuries. The doctor assessed his physical disability at 40% and the loss of earning capacity as 80%.

The learned Commissioner, in his award, assessed the physical disability at 80% and loss of earning capacity at 100%. The High Court confirmed the award. No reason has been assigned therefor.

The impugned judgment and order of the High Court and award passed by the learned Commissioner, thus, cannot be sustained and set aside accordingly. Appeal is allowed to the said extent CA @ SLP (C) NO.2854 of 2008 OF 2008

21. Respondent No.1 in this case met with an accident while traveling in an Ambassador Car which collided with a bus. He sustained injuries. He was a practicing advocate. Whereas his income was determined at Rs.5,000/- per month. For the purpose of awarding compensation as he had been out of practice for 39 months, the High Court determined it at Rs.10,000/- per month. It is on that basis multiplier of 5 had been applied. On what basis, the High Court came to the said conclusion has not been disclosed. No reason has been assigned in support thereof.

Furthermore, if the principle laid down in the Second Schedule was to be applied, the loss of income could not have exceeded 52 weeks.

He had suffered 50% disability. The amount of compensation, therefore, should have been calculated by applying the multiplier of 5.

We, therefore, are of the opinion that the matter should go back to the Tribunal for determination of the matter afresh. The judgment of the High Court is set aside.

The matter, therefore, is remitted back to the Tribunal for deciding the matter afresh.

22. The second question which arises for consideration is with regard to the payment of interest. There cannot be any doubt whatsoever that interest would be from the date of default and not from the date of award of compensation.

Section 4A(3) of the 1923 Act reads as under :

> "4A. Compensation to be paid when due and penalty for default.--(1) and (2) ...
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> (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--
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> (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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> (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.
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> 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)."

23. The said provision, as it appears from a plain reading, is penal in nature. It, however, does not take into consideration the chargeability of interest on various other grounds including the amount which the claimant would have earned if the amount of compensation would have been determined as on the date of filing of the claim petition. Workmen Compensation Act does not prohibit grant of interest at a reasonable rate from the date of filing of the claim petition till an order is passed. Only when sub-section (3) of Section 4A would be attracted, a higher rate of interest would be payable wherefor a finding of fact as envisaged therein has to be arrived at. Only because in a given case, penalty may not be held to be leviable, by itself may not be a ground not to award reasonable interest.

Reliance has been placed on Mubasir Ahmed (surpa), wherein it was held :

> "8. Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under Section 4A was dealt with by this Court in Maghar Singh v. Jashwant Singh [(998) 9 SCC 134]. By Amending Act, 14 of 1995, Section 4A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4A(1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of Sub-section (2) of Section 4A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise."

As threin this aspect of the matter has not been considered, we are of the opinion that interest will also payable at the rate of 7= % per annum from the date of filing of the application till the date of award. The rate of interest thereafter shall be payable in terms of the order passed by the Commissioner.

24. However, in the cases determined under the Motor Vehicles Act, interest stipulated therein shall become payable.

25. The third question which had been raised is as to whether any amount could be directed to be paid in excess of the amount claimed. We have noticed hereinbefore that the Act is a beneficent legislation. It imposes a statutory duty upon the Commissioner and/or the Tribunal.

Reliance has been placed in this behalf on a decision of this Court in Shyama Devi v. Union of India & Anr. [(2005) 12 SCC 217], wherein it was held :

> "6. So far as quantum of compensation is concerned, the Presiding Officer has recorded a finding that the deceased was earning Rs 1600 and was aged 56 years at the time of his death. On the basis of his last wages and age, according to Schedule IV of the Workmen's Compensation Act, 1923, a total sum of Rs 1,05,560 was payable as compensation on the death of the deceased but since the claim was made for Rs 84,448, we will restrict the award for the aforesaid sum as has been claimed in the claim petition. Apart from the above quantum of compensation, the appellant would

> be entitled to statutory interest payable on this sum. The appeal is accordingly allowed. The appellant is awarded compensation in the sum of Rs 84,448 with statutory interest under Section 4-A(3) of the Workmen's Compensation Act. The amount shall be paid by the Railways within a period of eight weeks."

26. No principle of law has been laid down therein. No reason has been assigned in support of the said conclusion. The said decision, therefore, must be held to have been rendered in the facts and circumstance of the case and not as a law laid down in terms of Article 141 of the Constitution of India.

27. The function of Commissioner is to determine the amount of compensation as laid down under the Act. Even if no amount is claimed, the Commissioner must determine the amount which is found payable to the workman. Even in the cases arising out of the 1988 Act, it is the duty of the Tribunal to arrive at a just compensation having regard to the provisions contained in Section 168 thereof.

In Nagappa v. Gurudayal Singh & Ors. [(2003) 2 SCC 274], it is held:

> "20. Similarly, the High Court of Punjab and Haryana in Devki Nandan Bangur and Ors. v. State of Haryana and Ors. [1995 ACJ 1288] observed that the grant of just and fair compensation is statutory responsibility of the Court and if, on the facts, the Court finds that the claimant is entitled to higher compensation, the Court should allow the claimant to amend his prayer and allow proper compensation.
>
> 21. For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'Just' compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under Sub-section (4) to Section 166, even report submitted to the Claims Tribunal under Sub- section (6) of Section 158 can be treated as an application for compensation under the M.V. Act. If required, in appropriate cases, Court may permit amendment to the Claim Petition."

In Syed Basheer Ahmed & Ors. v. Mohd. Jameel & Anr. [(2009) 2 SCC 225], this Court held :

> "9. Section 168 of the Act enjoins the Tribunal to make an award determining "the amount of compensation which appears to be just." However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression "which appears to the just" vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to

> determination of compensation."

In National Insurance Co. Ltd. v. Laxmi Narain Dhut [(2007) 3 SCC 700], this Court held :

> "24. In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake licence has to be considered differently in respect of the third party and in respect of own damage claims."

In Punjab State Electricity Board Ltd. v. Zora Singh and Others [(2005) 6 SCC 776], this Court held:

> "22. The administrative circulars as thence existed as also the regulations indisputably require supply of electrical energy to the agriculturists within a period of two months from the date of receipt of the amount asked for in terms of the demand notice. It may be true that the note appended thereto provides that the period specified therein shall be subject to availability of requisite material but the same does not absolve the appellant from performing its statutory duties.
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> 23. In A.P. SRTC v. STAT a Full Bench of the Andhra Pradesh High Court has noticed thus: (An LT p.544, para 31) "31[24]. The meaning of `note' as per P. Ramanatha Aiyar's Law Lexicon, 1997 Edn. is `a brief statement of particulars of some fact', a passage or explanation."
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> 24. The note, therefore, was merely explanatory in nature and thereby the rigour of the main provision was not diluted."

{[See also State of Haryana & Ors. v. Shakuntla Devi [2008 (13) SCALE 621]}.

28. For the reasons aforementioned, the Commissioner/Tribunal should determine the amount of compensation in the respective cases in the light of the observations made herein.

29. The appeals are accordingly disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

.....J. [S.B. Sinha] .....J. [Dr. Mukundakam Sharma] New Delhi;

May 12, 2009