

**Mary Vs. Jose Mathew**

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**SooperKanoon Citation :** [sooperkanoon.com/724906](http://sooperkanoon.com/724906)

**Court :** Kerala

**Decided On :** Feb-21-2006

**Reported in :** III(2006)ACC727; 2006ACJ2693; [2006(110)FLR1111];  
2006(3)KLT168

**Judge :** K.K. Denesan and; V. Ramkumar, JJ.

**Acts :** Workmen's Compensation Act, 1923 - Sections 4, 4A, 10 and 10(1);  
Workmen's Compensation (Amendment) Act, 1954

**Appeal No. :** M.F.A. No. 794 of 1999

**Appellant :** Mary

**Respondent :** Jose Mathew

**Advocate for Def. :** Joe Kalliath, Adv.

**Advocate for Pet/Ap. :** V.K. Gopalakrishna Pillai, Adv.

**Judgement :**

**K.K. Denesan, J.**

1. Appellants are the legal heirs/dependents of deceased Raphael who met with an accident on 29.8.1995 while employed as the driver of the 1st respondent and subsequently died on 30th September 1995. The 2nd respondent is the insurer.

Appellants preferred a claim under Section 4 of the Workmen's Compensation Act (for short, the Act) before the Workmen's Compensation Court claiming compensation for the death of Sri Raphel alleging that the accident arose out of and in the course of employment under the 1st respondent.

2. The Court of the Commissioner for Workmen's Compensation raised the following issues for consideration:

1. Whether the deceased was a workman as defined in the Act?
2. Whether the death resulted from the personal injury sustained to him in an accident arising out and during the course of his employment?
3. Whether the applicants are entitled to the amount claimed?
4. Which opposite party is liable for the compensation, if any?

The issues were answered in favour of the workman, It was held that the primary liability for payment of compensation rests on the employer viz. 1st respondent and since there is a valid insurance coverage, the second respondent shall be directed to deposit a sum of Rs. 62,588/- with simple interest @ 6% per annum on the compensation amount within 30 days from the date of receipt of the order. Appellants are dissatisfied with the quantum of compensation determined by the Workmen's Compensation Court and hence this appeal.

3. The only question that arises for consideration is whether the computation of compensation awarded should be based on the provisions of Section 4 of the Act as amended by Act 30/1995 w.e.f. 15.5.1995 or at the rates prevailed prior to the above amendment.

4. It is contended by the learned Counsel for the appellants that the Workmen's Compensation Court proceeded on the wrong assumption that the crucial date for determining the rate at which the compensation has to be worked out is the date of the accident whereas the correct date is the date of death in a case where the accident results in the death of the workman. It is also contended that the cause of action arises from the date of death as far as the legal heirs or dependents of a

deceased workman are concerned. In order to fortify the above submission, learned Counsel for the appellants draws our attention to Section 10 of the Act. Sub-section (1) of Section 10 says that no claim for compensation shall be entertained by the Commissioner unless notice of the accident has been given in the manner provided thereunder, as soon as practicable after the happening thereof and unless the claim is preferred within two years of the occurrence of the accident or, in the case of death, within two years from the date of death. According to the learned Counsel for the appellants, the legislature has taken note of the distinction between a claim for compensation for personal injuries sustained by the workman and compensation for the death of the workman. It is contended that in the case of death, the liability of the employer to pay compensation to the legal heirs arises on and from the date of death and therefore the computation of compensation as far as death is concerned should be with reference to the law that prevails on the date of death.

5. The above submission is made in the peculiar fact situation of this case. The accident occurred on 29.8.1995. The date of death was 30.9.1995. In between the above two events, Section 4 and some other provisions of the Act had undergone changes consequent on the amendment of the statute with effect from 15.9.1995. Section 4 as it stood prior to 15.9.1995 imposed a liability on the employer to pay compensation for death resulting from injury at an amount equal to 40% of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of Rs. 20,000/- whichever was higher. Under the amended provisions the amount would be equal to 50% of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of Rs. 50,000/- whichever is higher. If the crucial date is reckoned as the date of accident, the appellants will be deprived of the substantial increase in the rate of compensation introduced by the legislative amendment from 15.9.1995. It is in this background that the appellants have taken up grounds so as to establish that it is not the date of the accident that is the relevant date, but the date of death in cases where death occurs as a result of the accident.

6. Learned Counsel for the petitioner has taken up a further contention that the Commissioner for Workmen's Compensation has awarded interest at the rate of

6% whereas under the amended provision viz. Section 4A, the rate of interest should be at the rates to be paid by the employer by way of penalty for the default. In this context learned Counsel has placed reliance on the decision of a Division Bench of this Court in *Oriental Insurance Co. v. Mohammed* 2002 (1) KLT 131.

7. According to the learned Counsel, the decision of the Full Bench of this Court in *United India Insurance Co. Ltd. v. Alavi* 1998 (1) KLT 951 and the Supreme Court judgment approving the above Full Bench decision in *K.S.E.B. v. Valsala* 1999 (3) KLT 348 (SC) are distinguishable since the questions considered therein were based on the fact situation of those cases. It was a case of injury sustained by the workman and not a case of death. To buttress his contention, learned Counsel cited before us the decision of the Privy Council in *Ogden Industries Ltd. v. Lucas* (1969) 1 All E.R. 121 and canvassed for the proposition that cause of action arises from the date of death of the workman and not from the date of the accident.

8. The learned Counsel for the respondents brought to our notice that the very question that was considered by the Supreme Court in *K.S.E.B. v. Valsala* 1999 (3) KLT 348 (SC) was the effect of amendment of Sections 4 and 4A of the Workmen's Compensation Act, 1923 made by Act 30/1995 w.e.f. 15.5.1995 and that was answered holding that it is the date of accident that is the relevant date for the purpose of Section 4 of the Act.

9. On a consideration of the submissions made by the learned Counsel on either side and on a perusal of the decisions cited before us, we are of the view that the relevant date for the purpose of computation of compensation under Section 4 of the Act is the date of accident and not the date of death of the workman. The question posed in *K.S.E.B. v. Valsala* (supra) makes the position clear. The same reads:

The neat question involved in these Special Leave Petitions is whether, the amendment of Sections 4 and 4A of the Workmen's Compensation Act No. 30 of 1995 with effect from 15.9.1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15.9.1995?

The answer to the above question can be found in paragraph 5 of the judgment by which the dictum laid down by the Full Bench of this Court has been referred to with approval. The Supreme Court referred to its own earlier decision in *Pratap Narain Singh Deo v. Srinivas Sabata and Anr.* : (1976)ILLJ235SC and opined that the decision of the two Judge Bench of the Supreme Court in the *New India Assurance Co. Ltd. v. V.K. Neelakandan and Ors.* Civil Appeal Nos. 16904-16906 of 1996 did not take note of the dictum laid down in *Pratap Narain Singh Deo's* case (*supra*) and therefore the liberal interpretation placed by the two Judge Bench had not laid down the correct law. In view of the specific question that was posed for consideration by the Supreme Court and the answer given to that question as aforesaid, we do not find any merit in the contention that the Supreme Court did not consider a situation as occurring herein and therefore a different view is possible. The contention of the learned Counsel for the appellants placing reliance on Section 10(1) of the Act for the purpose of interpreting Section 4 of the Act is not acceptable. Section 4 of the Act, as is evident, deals with the rates of compensation in the case of personal injury as also death whereas Section 10(1) is a provision laying down the limitation period for preferring claims for compensation. Two years period additionally given to persons who claim compensation for the death of a workman has to be confined to that purpose only and cannot be extended to the realm of inputs required for computation of the rates of compensation, Section 10(1) does not have the effect of altering the date of cause of action or laying down a legislative policy that the cause of action will vary depending upon the result of the accident. What Section 10(1) does is to enlarge the period of limitation by two years in cases where the accident results in the death of the victim. It may be seen from the decision in *Ogden Industries Ltd.* (*supra*) cited by the learned Counsel for the appellants that reference has been made to the observation of Barwick CJ in the following words:

The work caused the injury and on the agreed facts the injury resulted in death. The relevant effect of the contribution of work to the disease so as to constitute it an injury, in my opinion, was, so to speak, spent in February, 1965, when the injury was received by the worker. All else was the result and consequence of the injury.

Of course, as rightly submitted by the learned Counsel for the appellants, the above view represents a minority view. However, whether majority view or minority view, the decision has got only a persuasive effect as far as this Court is concerned. What is binding on us is the decision of the Supreme Court and that of a larger Bench of this Court. We only notice that the minority view is in conformity with the decision of the larger Bench of this Court and the decision of the Supreme Court. In our view, there is no merit in the contention that for the purpose of computation of the rates for compensation, the cause of action will arise on two different rates in respect of the very same accident. Workman or the legal heirs get the right to claim compensation on the occurrence of the accident and a corresponding liability is cast on the employer on account of the accident. The injury, aggravation of the injury and ultimately the same resulting in death are only consequences of the accident. We, therefore, repel the contention that for the purpose of computation of compensation in this case, the amended provisions of Act 30/1954 shall be applied.

10. However, we find merit in the contention that the rate of interest payable should be 12% and not 6% because penalty provision under Section 4A had also undergone amendment under the very same Amendment Act of 1995 and that provision is effective with effect from the date of payment. A Division Bench of this Court has held that as far as interest payable by way of penalty is concerned, it is the date of payment that is the relevant date and not any other date.

11. Therefore, we partly allow this appeal directing that the respondents are liable to pay interest to the appellants for the amount awarded @ 12% from the date of default till the date of actual payment.

12. It is submitted by the learned Counsel for the respondents that the amount as awarded by the Workmen's Compensation Act has already been paid and what remains to be paid will be the difference in interest from 30 days after the date of the accident. The difference in amount on working out the interest @ 12% shall be paid by the respondents to the appellants within two months from today.