

**Murali Vs. Prasanth**

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**SooperKanoon Citation :** [sooperkanoon.com/728311](http://sooperkanoon.com/728311)

**Court :** Kerala

**Decided On :** Jul-10-2006

**Reported in :** 2007ACJ907; 2006(4)KLT358

**Judge :** J.B. Koshy and; M. Sasidharan Nambiar, JJ.

**Acts :** Workmen's Compensation (Amendment) Act, 1995; Workmen's Compensation Act, 1923 - Sections 4, 4A, 4(1), 4A(1), 4(2), 6 and 6(2)

**Appeal No. :** M.F.A. No. 1186 of 1998

**Appellant :** Murali

**Respondent :** Prasanth

**Advocate for Def. :** P. Sankarankutty Nair, Adv.

**Advocate for Pet/Ap. :** N. James Koshy, Adv.

**Judgement :**

**J.B. Koshy, J.**

1. Appellant, a workman employed under the first respondent, met with an accident during the course of employment. There was a valid insurance coverage by the second respondent Insurance Company. As a result of the accident, the appellant sustained the following injuries:

- 1) Fracture of maxilla
- 2) Fracture of sinus wall.
- 3) Extradural haematoma (right) fronto parietal region.
- 4) Injury to right eye.
- 5) Loss of teeth.
- 6) Very severe facial disfigurement.

He was 26 years old at the time of the accident. He filed an application for compensation of Rs. 1,20,000/- before the Commissioner for Workmen's Compensation. The Commissioner awarded only Rs. 10,400/- as half monthly compensation, taking Rs. 1,600/- as the monthly income of the appellant. Aggrieved by the quantum of compensation awarded, this appeal was filed. The factum of accident in the course of employment, coverage of insurance etc. are not in dispute. The Commissioner has awarded only half monthly compensation as no medical certificate was produced to the effect that the appellant suffered permanent disability and consequential loss of earning capacity on account of the accident. In the above circumstances, we have referred the matter to a Medical Board. After examination by the Medical Board of the Medical College Hospital, Calicut, 13% permanent disability was certified as the appellant is suffering from Diplopia due to restriction of abduction, Right eye + Anosmia on account of alleged injuries. Since the age is not disputed, 215.28 is the factor to be taken for calculation of compensation. The contention of the appellant is that compensation payable for the above loss of earning capacity is Rs. 26,866.90 as per the following calculation:

$$1600 \times 60/100 \times 215.28 \times 13/100 = 26,866.9$$

The accident occurred on 10.1.1994, before the amendment of the Workmen's Compensation Act by Act 30 of 1995 with effect from 15.9.1995. As held by the Apex Court in Kerala State Electricity Board v. Valsala K. : (1999)11LLJ 1112 SC compensation has to be calculated on the basis of the schedule relevant on the

date of the accident. Therefore, compensation payable for loss of earning capacity can be calculated as follows:

$$1.000 \times 50/100 \times 215.28 \times 13/100 = 13,993.20$$

2. It is further contended that a Division Bench of this Court in Mohammed v. Cochin Port Trust 2001 (3) KLT 166 held that half monthly compensation should be paid in addition to the compensation for permanent disability. We are of the opinion that there is no point to refer the matter to Full Bench as statutory provision Section 6 was not pointed out to the Hon'ble Judges when the matter was heard by the Division Bench. Section 6(2) of the Workmen's Compensation Act clearly provides that even though half-monthly compensation is paid for temporary disablement, after review if it is found that there is permanent disability, the lumpsum provided under the compensation has to be paid after deducting the amount already paid as half-monthly payments. Section 6(2) reads as follows:

#### 6. Review

(1) XXX XXX XXX Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or, if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

Half-monthly compensation is payable under Section 4(1)(d). There is no other provision for payment of half-monthly compensation. How and when half monthly compensation is to be paid is mentioned in Section 4(1)(d) and 4(2) as extracted below:

#### 4. Amount of compensation

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:

XXX XXX XXXXXX XXX XXX(d) Where temporary disablement, whether total or partial results from the injury a half monthly payment of the sum equivalent to

twenty five percent of monthly wages of the workman, to be paid in accordance with the provisions of Sub-section (2).

XXX XXX XXX(2) The half-monthly payment referred to in Clause (d) of Sub-section (1) shall be payable on the sixteenth day-

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

PROVIDED that:

(a) there shall be deducted from any lump sum or half monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half monthly payment, as the case may be; and

(b) no half monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

(c) Explanation: Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of Clause (a) of the proviso.

When compensation is calculated under Section 4(1)(c), whatever half monthly compensation paid under Section 4(1)(d) has to be deducted in terms of Section 6. Since Section 6 was not considered in Mohammed's case (supra), it is per incuriam. If the Commissioner found that claimant is entitled to compensation for permanent disability, the amount, if any, paid as half-monthly compensation under

Section 4(1)(d) has to be deducted and only balance is payable. However, any amount given or deposited for medical treatment or allowance or leave wages received by the workman on the basis of service conditions during the period of disablement cannot be deducted from the compensation awarded. Commissioner ordered to pay interest only if the compensation ordered is not paid within one month. That is also opposed to Section 4A of the Act. Section 4A is statutory provision to pay interest from the date of accident. Section 4A(1) provides that compensation under Section 4 shall be paid as soon as it falls due. In *Pratap Narain Singh Deo v. Srinivas Sabata* : (1976)ILLJ235SC it was held by the Apex Court that compensation becomes payable and falls due on the date of accident and not on the date of delivery of the amount of compensation. Unlike the payment of compensation liability of interest is directly linked to the date of payment and interest has to be calculated at the statutory rate existing when the payment or deposit is made and not on the date of accident. The award was passed only after the amendment of the Act and, therefore, claimant is entitled to get 12% interest from the date of accident till the date of deposit. Therefore, second respondent Insurance Company is liable to pay interest at the rate of 12% per annum from the date of accident till the date of deposit on the entire amount of compensation. Balance amount payable, i.e., Rs. 3,593.20 (13,993.20 - 10,400) and interest shall be deposited by the second respondent within two months from today.

The appeal is partly allowed.

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