HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

MA No.51/2018
IA Nos.1, 2 and 3 of 2018

c/w
CCROS No.08/2018

Reserved on : 11.08.2020
Pronounced on: 21.08.2020

United India Insurance Company Limited ...Appellant(s)

Through:- Mr. Vishnu Gupta, Advocate

V/s

Narinder Kour and others ...Respondent(s)

Through:- Mr. A.S.Azad, Advocate for R-1 to 3

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. This appeal by the United India Insurance Company Limited (hereinafter referred to as 'the insurer') filed under Section 30 of the Employees Compensation Act, 1923 (for short "the Act") is directed against award dated 15th January, 2018 passed by the Commissioner under the Employees Compensation Act, 1923 (Assistant Labour Commissioner, Jammu), whereby the claim petition filed by respondent Nos. 1 to 3 (hereinafter referred to as "the claimants") has been allowed and a sum of Rs.6,77,760/- along with interest to the tune of Rs.1,82,142/- has been awarded to the claimants.

2. The appellant in its memo of appeal has proposed many substantial questions of law, however, after going through the facts of the case and the nature of controversy raised in the appeal, I am of the view

that following substantial questions of law arise for determination in this appeal:-

i) Whether in the absence of any evidence regarding stress and strain and in the absence of causal connection between death and his employment, the Commissioner could have fixed the liability upon the employer and directed the insurer to pay the compensation in indemnification of the insured?

ii) Whether the death of the deceased, in light of the evidence on record, can be said to have taken place due to the accident occurred during and in the course of his employment?

3. The claimants have also filed their cross objections, the maintainability whereof has been vehemently opposed by the appellant-insurer. In view of the objection taken by the appellant to the maintainability of the cross-objections, I am of the view that following question too is a substantial question of law, which would require determination in this appeal and cross-objections:-

iii) Whether cross objections by the respondents in an appeal filed under Section 30 of the Act are maintainable?

4. Before appreciating the substantial questions of law formulated herein above, few facts, bare necessary, deserve to be adverted to: The case of the claimants, as pleaded before the Commissioner, in a nutshell, is that the deceased-Gian Singh, the husband of claimant No.1 and father of respondent Nos. 2 and 3 (both minors) was driver by profession and was engaged by respondent No.4 for driving vehicle bearing Registration No.JK02V-3256 (truck). On 07.04.2013, the deceased after

loading the vehicle with steel set out for a journey from Jammu to Srinagar. On 09.04.2013, when the deceased reached at Dig Dole and was on his way to Srinagar, all of a sudden he suffered medical complications owing to which he parked his vehicle on the road side. In the meanwhile, some persons looking to the medical condition of the deceased shifted him to the District Hospital, Ramban for medical treatment. The deceased reached Ramban Hospital but was declared dead on arrival. The claimants alleging that the accident in which the deceased lost his life had happened during and in the course of employment with respondent No.4, filed a claim petition before the Commissioner. A report with regard to the incident/accident was also registered with the Police Station, Ramban. Before the Commissioner the claimants asserted that the deceased at the time of accident/incident was getting monthly salary of Rs.10,000/- from his employer and was about 45 years of age. They also contended before the Commissioner that they tried their best to settle the dispute with the appellant and respondent No.4 but they both showed complete reluctance and denied them the due compensation. Along with claim application, the claimants also placed on record the copies of police report, autopsy report and driving license of the deceased driver. Copy of registration certificate of the vehicle and the insurance policy too were placed on record. On being put on notice, the appellant-insurer appeared before the Commissioner and contested the claim by filing written objections. Respondent No.4 also responded to the notice and appeared before the Commissioner through his counsel on couple of dates. Later on neither he nor his counsel appeared

before the Commissioner and accordingly, respondent No.4 was proceeded ex-parte.

5. On the basis of the pleadings of the parties, the Tribunal framed following issues for adjudication:-

"a) Whether the deceased "Gian Singh" falls within the definition of "employee" as prescribed under the E.C.Act, 1923 ? O.P.P

b) Whether the deceased met with an accident during and in the course of his employment for n/a no.2?

c) What was the age and wages of the deceased at the time of accident? O.P.P

d) Whether the vehicle in question and involved in accident was being plied in breach of the terms and conditions of the insurance policy? O.P.R-1

e) Relief? O.P. Parties."

6. With a view to discharging the burden of proof, claimant-Narinder Kour herself entered the witness box and also examined one Inder Singh as her witness. The appellant-insurer, however, chose not to lead any evidence in defense. On the request of appellant-insurer, the Investigating Officer was called on to submit inquest report with regard to the incident, which was submitted by the concerned police station and was considered by the Commissioner.

7. The Commissioner held issue No.1 proved in favour of the claimants. It was held that the deceased at the time of accident/incident was working as driver under the employment of respondent No.4 and, therefore, falls within the definition of "employee" as denied under the Act. Issue No.2 appears to have been debated vigorously by the learned counsel

appearing for the contesting parties. The Commissioner after taking note of several judicial precedents from the Supreme Court as well as this Court, came to the conclusion that there was a causal connection between the death of the deceased and his employment. On the basis of the evidence on record including the medical evidence, the Commissioner concluded that the stress and strain of the job of driver had contributed to the deterioration of his medical condition and, therefore, there was no escape from the conclusion that the death of the deceased had occurred during and in the course of his employment.

8. Issue No.(e), onus to prove whereof was placed on the appellant, was held not proved for want of evidence. After returning its findings on Issue Nos.(a), (b) and (d), the Commissioner took up issue No.(c) for consideration and worked out the compensation payable to the claimants, as per the provisions of the Act. The Commissioner took the monthly income of the deceased as Rs.8000/- per month proved and, accordingly, awarded compensation of Rs.6,77,760/- in terms of Section 4(1)(a) read with Schedule-IV of the Act. The claimants were also held entitled to the interest @ 7.5% w.e.f. 13.06.2014 to 15.01.2018 along with Rs.5,000/- towards funeral expenses of the deceased. Since the vehicle was found insured with the appellant, as such, the appellant was called upon to indemnify respondent No.4 and pay awarded compensation to the claimants within a period of 30 days. It is in the aforesaid background, the appellant has filed this appeal raising several questions of law for determination. The claimants have also filed cross objections challenging the award of interest @ 7.5% instead of statutory interest of 12% per

annum. The claimants have also claimed interest to be paid w.e.f. 09.04.2013 till realization of the amount.

9. Since the appellant has seriously disputed the maintainability of the cross objections under the Act, I deem it appropriate to first decide the question with regard to the maintainability of the cross objections under the Act, which is question No. (iii) formulated herein above.

Question No.(iii) "Whether cross objections by the respondents in an appeal filed under Section 30 of the Act are maintainable?

10. It is contended by Mr. Vishnu Gupta, learned counsel for the appellant that the Act and the Rules framed thereunder, particularly, Section 30 of the Act does not provide for filing of cross objections and, therefore, the claimants have no right to file cross objections in the appeal preferred by the insurer to assail the impugned award.

11. *Per contra*, Mr. A.S.Azad, learned counsel representing the claimants, submits that Section 30 confers on the claimants a right to appeal and filing of cross objections is only an exercise of such right, for, the right of appeal is a substantive right whereas cross objections only provide for procedure to exercise such right.

12. I have considered the rival contentions in the light of the provisions of the Act. It is true that Section 30 creates a right of appeal in favour of aggrieved party, be it employee or the employer and this right is subject to the condition that the appeal involves substantial questions of law for determination. Section 30 of the Act nowhere provides or even hints at the right of the respondents in the appeal to file cross objections.

Needless to say that the provision for filing cross-objections in the appeal could be traced to Order-41 Rule-22 of the Code of Civil Procedure. The Employees Compensation Act being a complete code in itself provides only limited application of CPC. Rule 41 of the Employees' Compensation Rules, 1924, which provides for application of certain provisions of the Code of Civil Procedure to the proceedings before the Commissioner reads thus:-

> "41. Certain provisions of Code of Civil Procedure, 1908 to apply. -- Save as otherwise expressly provided in the Act or these rules the following provisions of the first Schedule to the Code of Civil Procedure, 1908, namely, those contained in Order V, Rule 9 to 13 and 15 to 30; Order IX; Order XII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII, and Order XXIII, Rules 1 and 2, shall apply to proceedings before Commissioners, in so far as they may be applicable thereto: Provided that:
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> (a) for the purpose of facilitating the application of the said provisions the Commissioner may construct them with such alternations not affecting the substance as may be necessary or proper to adapt them to the matter before him;
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> (b) the commissioner may, for sufficient reasons, proceed otherwise than in accordance with the said provision, if he is satisfied that the interests of the parties will not thereby be prejudiced."

13. From a bare reading of the aforesaid Rule, it clearly transpires that the rule making authority consciously made certain provisions of the

Code of Civil Procedure applicable to the proceedings before the Commissioner. However, no provision of CPC was made applicable to the appeals under Section 30 of the Act. Absent applicability of CPC, particularly, the provisions of Order-41 Rule 22, it is difficult to concede the right of filing cross objections in favour of the respondents, contesting appeal filed under Section 30 of the Act.

14. Mr. Vishnu Gupta in support of his arguments has relied upon **Dinesh Kumar Golechha v. Meena Bai Yadav and others, 2015 ACJ 941** and **United India Insurance Co. Ltd. v. Dasari Lakshmi and others; 2005 ACJ 825**. In the case of Dinesh Kumar Golechha (supra), a Single Bench of High Court of Chattisgarh has considered the issue at some length and concluded that absent the applicability of Order 41 of the Code of Civil Procedure to the appeals filed under Section 30 of the Act, cross objections filed by the respondents would not be maintainable. To the similar extent is the judgment of High Court of Andhra Pradesh in the case of Dasari Lakshmi (supra).

15. Similar question also fell for consideration before the Himachal Pradesh High Court in the case of **Dwarku Devi and others v. Union of India and others, 2011 ACJ 2783** and Justice Deepak Gupta of Himachal Pradesh High Court, as then he was, who later became judge of the Supreme Court, also discussed the issue and decided against the maintainability of cross objections under the Act on the ground that the provisions of CPC, particularly, Order 41 Rule 22 were not made applicable to the appeals fled under Section 30 of the Act.

16. In view of the aforesaid, there is no escape from the conclusion that the cross objections in an appeal filed under Section 30 of the Act are not maintainable. Question no.(iii) is, thus, answered, accordingly.

17. Notwithstanding the answer to issue No.(iii) is in the negative and the cross objections are held not maintainable, an allied question arises whether the cross objections filed by the claimants could be treated as appeal under Section 30 of the Act. There is no dispute with regard to the fact that the claimants, if aggrieved of denial of due interest payable under the Act, are entitled in law to file an appeal under Section 30 of the Act subject of course to the limitations laid down therein and one such limitation is that such appeal must raise a substantial question of law. There is no denying fact that the cross objections filed by the claimants do raise a substantial question of law, that is, **"Whether the Tribunal can award interest at a rate less than the minimum prescribed under Section 4-A (3)(a) of the Act".**

18. This Court has considered this issue in the case of *National Insurance Company Limited v. Dheeraj Singh and another (MA No.140/2013 decided on 07.08.2020)*, wherein it has been authoritatively held that the minimum statutory interest that can be awarded under Section 4-A (3) (a) of the Act is 12% and the Commissioner has no discretion in the matter. For facility of reference, the observations of this Court made in paragraph Nos.18, 19 & 20 are reproduced herein:-

> "18 From a plain reading of clause (a) of sub section 3 of Section 4 A, it is manifestly clear that if an employer commits

a default in paying the compensation due under this act within one month from the date it fell due, the Commissioner shall direct that employer shall, in addition to the amount of arrears, pay simple interest thereon at the rate of 12% 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. It is, thus, evident that the Commissioner has been put under mandatory duty to compensate the employee by payment of interest which should not be less than 12% per annum. The rate of interest, however, could be higher than 12%, but the same should not exceed the maximum of the lending rates of any scheduled bank. This is what the expression "such higher rate" unequivocally conveys.

19. A careful reading of clause (a) of sub section 3 of Section 4-A of the Act leaves no manner of doubt that grant of interest at the rate of 12% per annum is the minimum that must be granted by the Commissioner. The Commissioner, however, may grant interest at a rate higher than 12%, but the same must not be exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by a notification in the official Gazette.

20. It is also trite and as is held by this Court in Ghulam Mohd vs Divisional Manager, SFC Doda, (MA 576/2010), decided on 12.03.2020, the amount of compensation falls due after one month from the date of accident and in case the employer fails in paying the compensation within 30 days from the date it falls due, he will have to pay the same along with interest. This answers question No.3 as well."

19. In view of the legal position adumbrated herein above, award of interest @ 7.5% per annum, that too, from the date of filing of the

application and not from the one month after the date of accident is substantial question of law raised in the cross objections, I am of the view that in case the cross objections are filed within 60 days and these cross objections do raise a substantial question of law, the same can be treated to be an appeal under Section 30 of the Act and considered by this Court along with the appeal of the employer or insurer.

20. Observations of a three-Judge Bench of the Supreme Court made in paragraph No.18 of the judgment rendered in the case of ***Urmila Devi and others v. Branch Manager, National Insurance Company Limited and others (Civil Appeal No.938 of 2020 decided on 30.01.2020)*** are relevant and are, thus, reproduced hereunder:-

> "18. We have, therefore, no doubt in our mind that right to take a cross objection is the exercise of substantive right of appeal conferred by a statute. Available grounds of challenge against the judgment, decree or order impugned remain the same whether it is an appeal or a cross-objection. The difference lies in the form and manner of exercising the right; the terminus a quo (the starting point) of limitation also differs."

21. However, in the instant case, I find that the award was delivered by the Commissioner on 15.01.2018 and the cross objections were filed by the claimants on 16.05.2018 i.e. after two months after expiry of 60 days limitation for filing appeal under Section 30 of the Act.

22. Although, there is no application seeking condonation of delay and that is so because the cross objectors were under a misconception of law that they were entitled to file cross objections, yet having regard to the beneficial object of legislation and also taking note of the fact that the

appeal of the appellant-insurer is pending consideration, I am of the view that this Court has ample powers to act *ex debito justitiae* and condone the delay of approximately two months. The cross-objections filed by the claimants are, thus, treated as appeal under Section 30 of the Act raising following substantial question of law:-

> "Whether the Commissioner under the Employees Compensation Act, 1923 can award interest at a rate less than the statutory rate prescribed under Section 4-A(3)(a) of the Act and whether the interest is to be awarded with effect from one month after the date of accident or from the date of filing of the claim application/petition?

23. After dealing with the objection of the appellant-insurer with regard to the maintainability of the cross-objections. It is time to proceed to determine the other two questions of law.

Re- Question No.(i)

24. This question primarily and fundamentally is a question of fact to be determined on the basis of evidence on record. In the instant case, as noted above, the claimant-Narinder Kour has entered the witness box and has also examined one independent witness, namely, Inder Singh. From the narration of events by claimant-Narinder Kour and witness Inder Singh, it has clearly come out that the deceased was medically fit when he commenced his journey from Jammu to Srinagar. The vehicle i.e. truck which the deceased was driving was carrying heavy load of steel, which was to be delivered to a destination in Srinagar. It had taken two days for the deceased to travel from Jammu to Dig Dole. It is because of stress and

strain of continuous driving, the medical condition of the deceased deteriorated.

25. It may be true that the deceased might be suffering from medical conditions but the fact cannot be denied that his medical condition got aggravated because of continuous driving of the vehicle for two days, that too, on a very difficult hilly terrain. This Court can take judicial notice of the fact that road from Jammu to Srinagar is a trickery hilly terrain and carrying heavy load in a truck is very stressful job. I am in agreement with the learned counsel for the appellant-insurer that the death of the deceased was not solely on account of the accident i.e. stress and strain of the work but the fact cannot be denied that the medical condition, whatever the deceased was suffering from, deteriorated and aggravated by the stress and strain of the work and this is so very clearly stated by the witness-Inder Singh, who was the person responsible for shifting the deceased from the vehicle to the District Hospital, Ramban. Though, the medical record indicates “multiple organ failure” as cause of death but the medical evidence does not indicate that such multi organ failure could not have been aggravated by the stress and strain of the job, the deceased was performing at the time of accident. Somewhat similar issue has already been dealt with by this Court in the case of **United India Insurance Company Ltd. v. Inder Jeet Kour and others, MA No.636/2010 decided on 20.08.2018**. Observations of this Court in paragraph Nos. 17 and 18 of the judgment deserves to be taken note of and are, thus, reproduced hereunder:-

"17. Literal meaning of "*Res ipsa loquitur*" is that "thing speaks for itself". The circumstances in which the deceased met with untoward death speak for themselves and there should be no manner of doubt that the death of the deceased was nothing but as a result of stress and strain of driving in the hilly terrain from Jammu to Poonch and back. In the view I have taken, I am supported by the judgment of the Supreme Court rendered in the case of ***Mst. Parampal Singh Vs. M/s National Insurance Company and another***; ***(2013) 3 SCC 409*** decided on 14.12.2012. The facts of the case of Param Pal Singh (supra) are identical to the facts of the case in hand. In the aforementioned case, the deceased was employed as truck driver. On 17.07.2002, he was driving a Truck in connection with commercial transport operation from Delhi to Nimiaghat. When the truck reached near about of Nimiaghat, the deceased felt giddy and, therefore, parked the vehicle on the roadside near a hotel and soon thereafter, he fainted. The deceased was removed to a nearby hospital, where the doctors declared him brought dead. The claim petition was filed by the claimants before the Commissioner alleging that the death of the deceased was due to stress and strain of continuous driving in the course of his employment with the employer. In the backdrop of the aforesaid facts situation, the question that arose for determination before the Supreme Court was whether the death of the deceased was in an accident arisen out of and in the course of his employment with the employer. The Hon"ble Supreme Court after taking note of case law on the subject including the English law, came to the conclusion that there was causal connection to the death of the deceased with that of his employment

as Truck driver. What was held by the Supreme Court in the aforesaid judgment in paragraph 29 is as under:-

> ".....Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CAUSAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms. away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an „untoward mishap" can therefore be reasonably described as an "accident" as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business....."

18. For arriving at the aforesaid conclusion, the Supreme Court even discussed the decision rendered by

the Supreme Court in the case of Shakuntala Chandrakant Shreshti (supra) heavily relied upon by the learned counsel for the appellant in the instant case. All aspects of the issue as were highlighted by the learned counsel for the appellant in the instant case were duly considered and analysed by the Supreme Court. The discussion by the Hon‟ble Supreme Court reflected from paragraph 21 and 26 answers all the questions raised by the appellant and even those not even contemplated by the appellant. At the cost of making the judgment a bit voluminous, I deem it absolutely necessary to reproduce the aforesaid paragraphs numbered from 21 to 26, which read as under:-

> "21. We are not oblivious that an accident may cause an internal injury as was held in *Fenton (Pauper) V. J. Thorley & Co. Ltd.,* (1903) AC 443, by the Court of Appeal. "...I come, therefore, to the conclusion that the expression „accident‟ is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed" *Lord Lindley* opined: "The word "accident‟ is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended an unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended any unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word „accident‟ is also often used to denote both the cause and the effect, no attempt being made to discriminate between

them. The great majority of what are called accidents are occasioned by carelessness; but for legal purposes it is often important to distinguish careless from other unintended and unexpected events. 22. There are a large number of English and American decisions, some of which have been taken note of in *Employees' State Insurance Corporation*, 1996 ACJ 1281 (SC), in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act. The principles are: (1) There must be a causal connection between the injury and the accident and the work done in the course of employment.
(2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury. (3) If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the facts of each case. 23. Injury suffered should be a physiological injury. Accident, ordinarily, would have to be understood as unforeseen or uncomprehended or could not be foreseen or comprehended. A finding of fact, thus, has to be arrived at, *inter alia*, having regard to the nature of the work and the situation in which the deceased was placed. 24. There is a crucial link between the causal connection of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without

> pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction. 25. An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred. 26. In a case of this nature to prove that accident has taken place, factors which would have to be established, *inter alia* are:
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> (1) Stress and strain arising during the course of employment;
>
> (2) Nature of employment; and
>
> (3) Injury aggravated due to stress and strain."

26. Apart from the evidence on record, it is a case where the well known doctrine of law of torts "*Res ipsa loquitur",* which means that *"things speak for itself"* is completely attracted and applicable.

27. In view of the above analysis, I am of the view that the claimants have discharged the burden of proof that the death of the deceased was due to the medical condition aggravated by stress and strain of the job of driver, which the deceased was performing at the time of accident.

Re- Question No.(ii)

28. The answer to question No.(i) leaves no scope for deliberation on question No.(ii). The causal connection between the employment and death of the deceased is clearly established. The medical condition of the

deceased deteriorated and got aggravated while he was driving the truck of his employer from Jammu to Srinagar. It was the stress and strain of long driving continuously for two days at a very hilly and trickery terrain, ailment the deceased was suffering with, got aggravated and the deceased ultimately died of multi organ failure. The Commissioner has elaborately discussed the issue in light of the evidence and legal position on the point and has very correctly concluded that the claimants had succeeded in establishing the causal connection of the employment of the deceased with his death and, therefore, the accident had occurred during and in the course of employment of the deceased under respondent No.4. I see no justification to take a view contrary to the one taken by the Commissioner. This answers the question No.(ii) as well.

29. Lastly, the question raised in the cross objections, now treated as appeal by this Court, needs to be dealt with. As noticed above, this Court has already considered this issue in two judgments rendered in the cases of **Dheeraj Singh** (supra) and ***Ghulam Mohd. V. Divisional Manager, SFC Doda (MA No.576/2010) decided on 12.03.2020*** and held that the Commissioner under the Act has no discretion to grant interest at a rate less than the minimum statutory interest of 12% prescribed under Section 4-A(3)(a) of the Act. Similarly, the Commission is under statutory obligation to award interest w.e.f one month after the date of accident. The accident in the instant case had happened on 09.04.2013 and, therefore, the interest ought to have been paid by the Commissioner w.e.f. 09.05.2013 that too @ 12% per annum.

30. The discussion made herein above takes care of the question raised in the cross objections/appeal.

31. In view of the foregoing, the appeal of the appellant-insurer is found to be devoid of any merit and is dismissed, accordingly. The cross objections, treated as appeal filed by the claimants, are allowed. The claimants are held entitled to compensation of ₹ 6,77,760/- along with interest @ 12% per annum with effect from 09.05.2013 till its realization. The appellant-insurer to deposit the balance amount with the Commissioner within one month from today.

(**Sanjeev Kumar)**
Judge

JAMMU.
21.08.2020
Vinod.

Whether the order is speaking : Yes
Whether the order is reportable: Yes