REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 9046 of 2019
(Arising out of SLP (C) No 18110 of 2019)

K Sivaraman & Ors **.... Appellants**

Versus

P Sathishkumar & Anr **....Respondents**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 This appeal arises from a judgment of a Division Bench of the Madurai Bench of the Madras High Court dated 1 June 2017. In an appeal arising from a decision of the Deputy Commissioner for Employee's Compensation, the High Court enhanced the compensation payable under the Employee's Compensation Act 1923[1] from Rs 4,33,060 to Rs 8,86,120. The High Court has awarded interest at the rate of 12% per annum from the date of the accident.

2 In the present proceedings which have been instituted under Article 136 of the Constitution, notice was issued on 26 July 2019. Since the appellants were

[1] "1923 Act"

represented by the first appellant in person, this Court, by its order dated 26 July 2019, directed that an *amicus curiae* be nominated by the Supreme Court Legal Services Committee. Accordingly, Mr S Mahendran, learned counsel, has been nominated as the *amicus curiae*, whom we have heard in support of the appeal.

3 The appellants are the father, mother, sister and brother of Dinesh Kumar, who died in the course of an accident on 31 January 2008. On the date of the incident, the deceased was 26 years of age and was engaged as a driver of a trailor lorry. While the vehicle was being driven on NH 12 in Kota, Rajasthan, a truck bearing registration No MH 19 Z 1696 came from the opposite direction and dashed against the trailor, resulting in the death of Dinesh Kumar. At the time of the accident, the deceased was in the employment of the first respondent. A claim under the 1923 Act was lodged before the Deputy Commissioner for Employee's Compensation, Madurai on 29 April 2013. On 26 March 2014, the claim was allowed by an award in the amount of Rs 4,33,060. The Deputy Commissioner had proceeded *ex parte*. The appellants filed an appeal[2] before the Madras High Court for enhancement of the compensation.

4 The High Court, by its judgment dated 23 November 2015, remanded the proceedings to the Deputy Commissioner for determination afresh. While remanding the proceedings, the High Court noted that though the appellants had filed a salary certificate as Exhibit P5 to establish that the monthly income of the deceased was Rs 32,000, no witness was examined on behalf of the employer to prove the salary certificate. However, acceding to the request of the appellants that they should be furnished with an opportunity to examine the employer's witness in support of Exhibit

[2] CMA (MD) 344 of 2014

P5, the High Court considered it in the interests of justice to remand the proceedings.

5 On remand, the Commissioner for Workmen's Compensation, Madurai, by an order dated 4 March 2016, maintained the award of compensation in the amount of Rs 4,33,060. Before the Commissioner, on remand, the appellants examined PW2, the owner of the vehicle which was being driven by the deceased. During the course of his evidence, he stated as follows:

> "I am the 1st respondent in this case under W.C. Case No.74/2011 is under tail in this court is known to me. I received summons 3 times from the court. For the last two summons, as my own lorries were working in the other states and I also have to go there, I was unable to come and adduce witness for the court summon. The accident platform trailor lorry TN 28 AB 1933 belongs to Sathishkumar. The deceased Dinesh Kumar S/o Sivaraman worked as a driver. In 2008, (31.1.2008) when going to Pandicheri to Rajasthan Sironi before Kotta town the opposite coming tarras lorry dashed face to face and caused accident. As soon as the accident occurred in the same occurrence place Dineshkumar died. Before accident he worked for about 3 years. He was having proper driving license. He was having license for driving heavy vehicles. The Ex.P.5 monthly pay certificate was issued by me. In it, for deceased Dinesh Kumar I was paying Rs 32,000 per month (including food expenses) but pay of Rs 25,000. The vehicle involved in the accident has been properly insured with 2nd respondent company of M/s Reliance General Insurance Company. At the time of accident, the insurance was in current."

6 The Commissioner, however, proceeded on the basis that in terms of the notification issued under Section 4(1B) of the 1923 Act, whatever be the monthly pay received by a person, the jurisdiction of the adjudicating authority was subject to a ceiling of Rs 4,000 per month in computing the monthly wages of the employee. Taking the monthly salary at Rs 4,000, the Commissioner applied a multiplicand of 215.28 in terms of Schedule IV (the deceased being 26 years of age) and arrived at a

figure of Rs 4,30,560 to which an additional amount of Rs 2,500 was added towards funeral expenses. A total award in the amount of Rs 4,33,060 was decreed as the compensation payable to the appellants.

7 In an appeal filed before the High Court, the Division Bench took note of the fact that in pursuance of the order of remand, the salary of deceased employee had been proved to be Rs 32,000 per month. The High Court noticed that though the accident had taken place on 31 January 2008, the petition for compensation had been lodged on 28 January 2011 and was decided by the Commissioner on 4 March 2016.

8 In the meantime, a notification was issued by the Central Government on 31 May 2010 in the following terms:

> "S.O.1258(E) – In exercise of the powers conferred by sub-section (1B) of Section 4 of the Employee's Compensation Act, 1923, (g of 1923), the Central Government hereby specified, for the purpose of Sub-Section (1) of the said section, the following amount as monthly wages, with effect from the date of publication of this notification in the official gazette, namely – Eight thousand rupees."

9 The High Court was of the view that having due regard to the fact that the legislation in question is a social welfare legislation, the enhanced income of Rs 8,000 per month should form the basis of the computation. Thus, applying the multiplicand in terms of Schedule IV, the High Court enhanced the compensation to Rs 8,86,120.

10 In appeal before this Court, the learned *amicus curiae* urged that both the Commissioner and the High Court have erred - the Commissioner having adopted a figure of Rs 4,000 per month and the High Court, Rs 8,000 per month. The learned *amicus curiae* submitted that in terms of the provisions of Section 4(1)(a) of the 1923

Act, where death has resulted from injury, the compensation payable is an amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor. The relevant factor is specified in Schedule IV and for the deceased who was 26 years old on the date of the accident, the multiplicand would be 215.28. The learned *amicus curiae* submitted that under sub-section (1B) of Section 4, the Central Government is empowered to issue a notification specifying, for the purposes of sub-section (1), the monthly wages in relation to an employee as it may consider necessary. However, it was submitted that the notification does not impose a cap or ceiling on the monthly wages which form the basis of calculating the compensation due and payable. Where the actual wages of an employee are proved to be in excess of the amount which is specified in the notification, there is no bar in adopting the monthly wages so proved in terms of Section 4(1)(a). The learned counsel buttressed this submission by adverting to Act 45 of 2009, which took effect from 18 January 2010 and deleted the deeming provision in Explanation II to Section 4[3]. Moreover, it was urged by the learned *amicus curiae* that the method of calculating wages is specified in Section 5. It was urged that clause (a) of Section 5 will be attracted to the present case where the employee was, during a continuous period of not less than twelve months immediately preceding the accident, in the service of the employer.

11 The learned *amicus curiae*, at a belated stage, sought to distinguish the judgments of this Court in **Pratap Narain Singh Deo** v **Srinivas Sabata**[4] ("**Pratap**

[3] "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."
[4] (1976) 1 SCC 289

Narain Singh") and **Kerala State Electricity Board** v **Valsala K**[5] ("**Valsala**") in which it was held that the date relevant for the determination of compensation payable under the 1923 Act is the date of the accident and that the benefit of an amendment enhancing the amount of compensation shall not apply to accidents that take place prior to its coming into force. To support this, the *amicus curiae* relied on the judgments of this Court in **New India Assurance Company Ltd**. v **Neelakandan** ("**Neelakandan**"),[6] and **National Insurance Co Ltd**. v **Mubasir Ahmed**[7] ("**Mubasir Ahmed**").

12 Section 4(1)(a) of the Act contains the following provision:

> "4. Amount of compensation.—(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:—
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> | | | |
> |---|---|---|
> | (a) | where death results from the injury | an amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor;
or
an amount of one lakh and twenty thousand rupees, whichever is more;" |

13 The proviso to the above provision stipulates that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b). Clause (b) deals with a case involving permanent total disablement resulting from the injury. The expression "relevant factor" is defined in Explanation I to be the factor specified in Schedule IV. Prior to Act 45 of

[5] (1999) 8 SCC 254
[6] Civil Appeal Nos. 16904-09 of 1996
[7] (2007) 2 SCC 349

2009, Section 4 contained Explanation II, which was in the following terms:

> "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."

14 By Act 45 of 2009, which came into force on 18 January 2010, Explanation II came to be deleted. Sub-section (1B) was introduced in Section 4 to read as follows:

> "(1-B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary."

15 The question before this Court is whether the benefit of Act 45 of 2009 deleting the deeming provision in Explanation II which capped the monthly wages of an employee at Rs 4,000 would also apply to accidents which took place prior to the coming into force of its provisions i.e. 18 January 2010 and where final adjudication is pending. In assessing whether the Act 45 of 2009 applies retrospectively, it is necessary to analyze the relevant precedents of this Court. In **Pratap Narain Singh**, the first respondent was in the employment of the appellant and suffered injuries which arose out of and in the course of employment. It was contended that the Commissioner committed an error of law in imposing a penalty on the appellant under Section 4A(3) of the 1923 Act as the compensation payable had not fallen due until it was 'settled' by the Commissioner under Section 19 of the 1923 Act. Section 4A reads:

> "4A. Compensation to be paid when due and penalty for default.-
> (1) Compensation under section 4 shall be paid as soon as it falls due.
> (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the

> employee, as the case may be, without prejudice to the right of the employee to make any further claim.
> (3) Where any employer is in default in paying the compensation due under the Act within one month from the date it fell due, the Commissioner shall –
> (a) Direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve percent 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
> (b) If, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty…"

16 In terms of Section 4A(1), compensation under Section 4 is payable "as soon as it falls due." Section 4A(2) contemplates a situation wherein the employer, though accepting the liability to pay compensation to the injured employee, disputes the quantum of compensation payable. In such cases, sub-section (2) enjoins the employer to make a provisional payment based on the extent of accepted liability by depositing it with the Commissioner or by paying it directly to the employee. Section 4A(3) stipulates that where an employer defaults in paying compensation within one month from the date on which it falls due, the Commissioner is empowered to direct the payment of interest as well as an additional amount as arrears for an unjustifiable delay in making payment. Section 19 of the Act reads:

> "19. Reference to Commissioners.- (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not an employee or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement be settled by a Commissioner…"

17 Section 19 stipulates that any question arising in any proceeding under the Act shall, in the default of an agreement, be settled by the Commissioner. A four judge

Bench of this Court rejected the contention urged by the appellant and held that compensation "falls due" on the date of the accident. Consequently, the Commissioner was empowered to impose interest or penalty for the duration prior to the settling of the claim or where there was unjustified delay in making good the payment of compensation. The Court held:

> "18…The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due with after the Commissioner's order dated May 6, 1969 under section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of an agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under section 3, in respect of the injury, was suspended until after the settlement contemplated by section…
>
> 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary. It was the duty of the appellant, under section 4A(1) of the Act, to pay the compensation at the rate provided by section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making and application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement setting the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."

18 The Court held that though Section 19 empowered the Commissioner to decide claims or objections under the Act, the obligation to pay compensation to an injured employee was not suspended until the Commissioner settled the amount payable in the case of a dispute between the employer and the employee. Section 4A deals with **when** the obligation for the payment of compensation as required under the 1923 Act arises. For the purposes of Section 4A of the 1923 Act, the obligation to pay compensation arises on the date of the accident. Where an employer disputes the quantum of compensation payable, it is enjoined to make a provisional payment to the Commissioner or the employee pending the settlement of the claim. This is in order to ensure that an employer does not escape its obligation to make good the payment of compensation or unduly delay its payment on frivolous grounds.

19 In **Neelakandan**, the accident had taken place prior to the coming into force of an amendment to the 1923 Act whereunder the deemed income had been increased from Rs 1000 to Rs 2000. The question before the Court was whether the benefit of the amendment would extend to accidents which took place prior to its coming into force and where the final adjudication of the amount payable was pending. A two judge Bench of this Court held that though the accident in question took place in 1981, the benefit of the amendment would apply to accidents that took place prior to the coming into force of the amendment in the following terms:

> "It is not disputed that Section 4 of the Act was amended in 1995 by Amendment Act 30 whereunder the deemed income has been increased from Rs 1000 to Rs 2000. Learned counsel for the Insurance Company has vehemently contended that since the accident took place in the year 1981, the law operating on that date is applicable and as such the workmen are not entitled to the benefit of the amendment. We do not agree with the learned counsel. **We are finally determining the right of workmen today. The Act is a special legislation for the benefit of the labour. Keeping in view the scheme of the Act we are of the view that the**

> **only interpretation which can be given to the amendment is that is any benefit is conferred on the workmen and the said benefit is available on the date when the case is finally adjudicated, the said benefit should be extended to the workmen**. We, therefore, hold that the compensation to be paid to the heirs of the workmen has to be calculated on the basis of the actual wages – Rs 1800 – drawn by them…"
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> (Emphasis supplied)

20 The Court noted that the 1923 Act is a social welfare legislation for the benefit of employees. Consequently, taking into account the scheme of the Act, the court must adopt an interpretation which extends a benefit to the employee on the date of the final adjudication of the claim. Where a case is pending final adjudication and an amendment is enacted increasing the amount of compensation payable, the enhanced amount would be applicable in the determination of the quantum of compensation payable. Conspicuous in its absence in the submission advanced by the learned *amicus curiae* is how a subsequent Bench of this Court dealt with the position of law laid down in **Neelakandan**.

21 In **Valsala**, the question before a three judge Bench of this Court was whether an amendment to Section 4 and 4A of the 1923 Act enhancing the amount of compensation and the rate of interest would be applicable to cases where the accident took place prior to the coming into force of the amendment. This Court noted that various High Courts in the country had taken the uniform position that the relevant date for determining the rights and liabilities of the parties is the date of the accident. Relying on the judgment of this Court in **Pratap Narain Singh**, the Court overruled the judgment in **Neelakandan** and held that the benefit of an amendment whereunder the compensation payable was increased, would not apply to accidents that took place prior to its coming into force. The Court held:

> "4. A two-judge Bench of this Court in New India Assurance Co Ltd. v. V.K. Neelakandan however, 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 workmen and not the compensation which was payable on the date of the accident. The two-judge Bench in Neelakandan case however, did not take notice of the judgment in Pratap Narain Singh Deo case as it presumably was not brought to the notice of their Lordships. Be that as it may, in view of the categorial law laid down by the larger Bench in Pratap Singh Deo case the view expressed by the two-judge Bench in Neelakandan case is not correct."

22 In the course of the judgment in **Valsala**, the three judge Bench also affirmed the full judge Bench judgment of the Kerala High Court in **Alavi** "to the extent it is in accord with the judgment of the larger bench" in **Pratap Narain Singh**. The Court held:

> "5. Our attention has also been drawn to a judgment of the Full Bench of the Kerala High Court in *United India Insurance Co. Ltd v. Alavi* wherein the Full Bench precisely considered the same question and examined both the above-noted jugdments. It took the view that the injured workman becomes entitled to get compensation the moment he suffers personal injuries of the types contemplated by the provisions of the Workmen's Compensation Act and it is the amount of compensation payable *on the date of the accident and not the amount of compensation payable on account of the amendment made in 1995*, which is relevant. The decision of the Full Bench of the Kerala High Court, to the extent it is on accord with the judgment of the larger Bench of this Court in *Pratap Narain Singh Deo* v *Srinivas Sabata* lays down the correct law and we approve it."

23 In **Alavi**, a full judge Bench of the Kerala High Court was required to adjudicate whether Sections 4 and 4A of the 1923 Act as amended in 1995 enhancing the amount of compensation and rate of interest would be applicable to claims in respect of death and permanent disablement resulting from accidents which occurred prior to 15 September 1995 i.e. the date on which the amended provisions came into force. In all the appeals before the Court, the accident as well as settling of the claims by the Commissioner took place prior to the coming into force of the amending provisions

enhancing the quantum of compensation payable. The Court relied on the decision of this Court in **Pratap Narain Singh** and held that the Amending act enhancing compensation would apply only to accidents that took place after the coming into force of the amendment. The Court held:

> "17. Right to claim compensation as well as the obligation to pay the same are created by the statute itself. It is well-settled rule of interpretation that if the law is procedural, there is, no doubt, a presumption that it applies to pending proceedings. If the law is substantive in nature, the normal presumption against retrospectivity still holds good, subject to the principle that the Court must look to the question whether the rights of the parties at the commencements of the proceedings were intended to be modified either expressly or by necessary implication: *Neeli* v. *Narayana Pilla* [(1992) 2 K.L.J. 937, 950]. If the amended provisions are given effect to in the matter of awarding enhanced compensation even with regard to the accident which occurred prior to 15 September 1995, and the claim was decided prior to the same date, the law applicable is the unamended provisions of the Workmen's Compensation Act, 1923. But if the claim could not be settled prior to 15 September 1995 going by the Division Bench decision in *Asokan* case (*vide supra)*, those claimants would get the benefit of the Amendment Act. In other words, the benefit would depend on when the case is decided either prior to 15 September 1995 or subsequent. This was never the intention of the Legislature…"

24 The question before the Bench in **Valsala** was clearly whether an amendment to Section 4 and 4A of the 1923 Act enhancing the amount of compensation and the rate of interest would be applicable to cases where the accident took place prior to the coming into force of the amendment. The Bench held that the benefit of an Amending act enhancing the quantum of compensation would not apply to accidents that took place prior to the coming into force of the amendment. Though the learned *amicus curiae* sought to rely on the two judge Bench judgment of this Court in **Mubasir Ahmed**, it is sufficient at this stage to note that the subsequent judgment of this Court

in **Oriental Insurance Company** v **Siby George**[8] noted that the judgment in **Mubasir Ahmed** is contrary to the judgments of this Court in **Pratap Narain Singh** and **Valsala** and hence not a binding precedent.

25 The 1923 Act is a social beneficial legislation and its provisions and amendments thereto must be interpreted in a manner so as to not deprive the employees of the benefit of the legislation. The object of enacting the Act was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits. The amendments to the 1923 Act have been enacted to further this salient purpose by either streamlining the compensation process or enhancing the amount of compensation payable to the employee.

26 Prior to Act 45 of 2009, by virtue of the deeming provision in Explanation II to Section 4, the monthly wages of an employee were capped at Rs 4000 even where an employee was able to prove the payment of a monthly wage in excess of Rs 4,000. The legislature, in its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare legislation did not enhance the quantum in the deeming provision, but deleted it altogether. The amendment is in furtherance of the salient purpose which underlies the 1923 Act of providing to all employees compensation for accidents which occur in the course of and arising out of employment. The objective of the amendment is to remove a deeming cap on the monthly income of an employee and extend to them compensation on the basis of the actual monthly wages drawn by them. However, there is nothing to indicate that the Legislature intended for the benefit to

[8] (2012) 12 SCC 540

extend to accidents that took place prior to the coming into force of the amendment.

27 The learned *amicus curiae* relied on the judgment of this Court in **Commissioner of Income Tax** v **Vatika Township Private Limited**[9] to contend that amendments that confer a benefit upon individuals must be given retrospective application. In that case, the question before a Constitution Bench of this Court concerned whether the proviso to Section 113 which was inserted by the Finance Act 2002 applied retrospectively. The scheme for block assessment was introduced in Chapter XIV-B to the Finance Act (w.e.f 1 July 1995) to curb tax evasion and expedite as well as simplify the assessments in such search cases. By virtue of the proviso, a date was specified with reference to which the rate of surcharge is payable upon block assessments. This Court noted that the chapter for block assessment was a self-contained code and that the effect of the proviso was to impose an additional burden on the assessee. Consequently, it was held that the proviso did not operate retrospectively. In the course of the judgment, this Court held:

> "30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn. [(2005) 7 SCC 396], the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra [(2006) 6 SCC 289]. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not)

[9] (2015) 1 SCC 1

confronted with any such situation here."

28 This Court held, in line with settled precedent of this Court, that where (i) a legislation confers a benefit on some persons, (ii) without inflicting a corresponding detriment on some other persons or the public generally and (iii) where the conferral of such benefit appears to be the intention of the legislature, the presumption of prospective application may stand displaced. Though amendments enhancing the compensation payable under the 1923 Act confer a benefit upon employees, a corresponding burden is imposed on employers to pay a higher rate of compensation. It is presumably for this reason that the three judge Bench of this Court in **Valsala** and the Kerala High Court in **Alavi** held that the benefit of an amendment enhancing the rate of compensation does not have retrospective application to accidents that took place prior to the coming into force of the amendment. Further, as we have already noted, there is nothing in Act 45 of 2009, either express or implied, to denote an intention of the legislature to confer the benefit of the amendment to accidents that took place prior to its coming into force.

29 We also briefly note the position of law regarding the date relevant for the determination of compensation payable under the Railways Act 1989[10]. Chapter XIII of the 1989 Act titled 'Liability of Railway Administration for Death and Injury to Passengers due to accidents' stipulates an obligation on the railway administration to pay compensation to such extent "as may be prescribed" on the account of untoward accidents. In **Rathi Menon** v **Union of India**[11], the question before a two judge Bench

[10] 1989 Act
[11] (2001) 3 SCC 714

of this Court was whether the benefit of an amendment enhancing the rate of compensation can be extended to accidents that took place prior to the coming into force of the amendment. The Court assessed the scheme of the 1989 Act and held that the date relevant for the determination of compensation payable shall be the date of adjudication. Consequently, the benefit of an amendment enhancing compensation would be extended to accidents that took place prior to the coming into force of the amendment. In the course of the judgment, this Court differentiated between the scheme of the 1923 Act and the 1989 Act and addressed the contention raised on the basis of the judgments of this Court in **Pratap Narain Singh** and **Valsala** in the following terms:

> "…The scheme of the provision under the W.C. Act is materially different from the scheme indicated in Chapter XIII of the Railways Act. In the former, compensation payable is fixed in the Act itself through the schedule incorporated thereto. Section 4 of the W.C. Act shows that such compensation is to be linked with the monthly wages of the workman concerned. It also provides that the liability to pay compensation on the employer would arise not when the Commissioner passes the order but on the date of sustaining the injury itself. A provision is made in Section 4A of W.C. Act that where any employer is in default of paying the compensation due within one month the Commissioner shall direct the employer to pay not only interest but in appropriate cases a penalty ranging up to 50% of the amount payable. The said scheme cannot be equated with the scheme in Chapter XIII of the Railways Act, as the principles involved have differences…"

Having distinguished the scheme of the 1923 Act and the 1989 Act, the Court held that the judgments in **Pratap Narain Singh** and **Valsala** have no bearing on claims under the 1989 Act.

30 Recently, a two judge Bench of this Court in **Union of India** v **Rina Devi**[12], considered an apparent conflict between the judgments in **Rathi Menon** and **Kalandi Charan Sahoo** v **General Manager, South-East Central Railway, Bilaspur**[13] ("**Kalandi**") regarding the date relevant for the determination of compensation under the 1989 Act. It was contended that the judgment in **Rathi Menon** was premised on the basis that there was no provision for the payment of interest under the 1989 Act and that there would be injustice if compensation is paid at money value prevalent at the time of the accident. It was on this basis that the judgment in **Pratap Narain Singh** was distinguished. This Court noted that in **Thazhathe Purayil Sarabi** v **Union of India**[14] ("**Thazhathe**"), it was held that under the 1989 Act, a claimant is also entitled to the payment of interest which accrues from the date of the incident. The decision in **Thazhathe** was subsequently followed by this Court in **Kalandi** and **Mohamadi** v **Union of India**.[15] Consequently, this Court held that since interest is now payable under the 1989 Act, the basis of the judgment in **Rathi Menon** has changed. The Court held:

> "15.3…We are of the view that law in the present context should be taken to be that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. **Once concept of interest has been introduced, principles of Workmen Compensation Act can certainly be applied and judgment of 4- Judge Bench in Pratap Narain Singh Deo (supra) will fully apply.** Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation

[12] (2019) 3 SCC 572
[13] (2019) 12 SCC 387
[14] (2009) 7 SCC 372
[15] (2019) 12 SCC 389

> as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation…
>
> 15.4 Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts…**The 4-Judge Bench judgment in Pratap Narain Singh Deo (supra) holds the field on the subject and squarely applies to the present situation**."
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> (Emphasis supplied)

This Court held that compensation under the 1989 Act would be calculated with reference to the date of the accident along with interest payable. However, if the amount calculated is less than the amount prescribed as on the date of the award of the Tribunal under the 1989 Act, the claimant will be entitled to higher of the two amounts.

31 The judgment in **Rathi Menon** and **Rina Devi** were both rendered by a Bench of two judges of this Court. In **Rina Devi**, this Court resolved the apparent conflict between **Rathi Menon** and **Kalandi** by taking into account the judgment in **Rathi Menon** as well as the change in the position of law following the judgment. The position of law under the 1989 Act has thus been brought closer to the judgment of this Court in **Pratap Narain Singh** which held that the date relevant for the determination of compensation would be the date of the accident. The judgment in **Rina Devi** was recently followed by this Court in **Union of India** v **Radha Yadav**[16].

32 It is pertinent to note that no similar position of law for the determination of the higher amount of compensation payable was adopted under the 1923 Act by this Court in **Pratap Narain Singh** and **Valsala**. This Court, being a Bench of two judges, is

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bound by the categorical position of law laid down in **Pratap Narain Singh** and **Valsala**, both being judgments rendered by larger Benches of this Court. Consequently, we hold that the relevant date for the determination of compensation payable is the date of the accident and the benefit of Act 45 of 2009 does not apply to accidents that took place prior to its coming into force.

33 In the present case, the accident occurred on 31 January 2008 i.e. prior to the coming into force of Act 45 of 2009. Consequently, the High Court erred in extending the benefit of Act 45 of 2009 which deleted Explanation II to Section 4 to the present case. The High Court was required to determine the compensation payable on the date of the accident on which date, the deemed cap of Rs 4000 as monthly wages was applicable.

34 Though the accident took place in 2008, the appeal is being decided over 12 years later. We take note of the fact that following the order of remand by the High Court, the employer deposed as PW2 and stated that the deceased had worked in his establishment for about three years. The employer duly proved Exhibit P5 in the course of his evidence which was the monthly pay certificate indicating that the deceased was drawing a monthly wage of Rs 32,000, including expenses towards food. Significantly, no appeal was filed by the respondents against the judgment of the High Court enhancing the compensation. In this view of the matter, we are not inclined to interfere with the award of compensation ordered by the High Court in exercise of the inherent jurisdiction of this Court to do complete justice under Article 142 of the Constitution. Having clarified the law as noted above, the appeal shall stand dismissed.

35 Before concluding the judgment, it would be necessary to note that in the office report dated 14 October 2019 and 18 November 2019, it has been stated that service is complete on the respondents.

36 The total compensation payable to the appellant shall stand quantified at Rs 8,86,120 on which interest shall be payable at 12% per annum from the date of the accident. The liability for the payment of compensation shall be joint and several. The compensation shall be payable to the first and the second appellants jointly and severally by the respondents. The compensation shall be paid over within a period of two months from the receipt of a certified copy of the order. There shall be no order as to costs.

……..…..…..…….....J.
[Dr Dhananjaya Y Chandrachud]

…..…….…..…….....J.
[Ajay Rastogi]

New Delhi;
February 13, 2020.