

*

IN THE HIGH COURT OF DELHI

+

FAO No.21/2008

United India Insurance Co. Ltd. Appellant
through: Mr.K.L.Nandwani, Adv.

VERSUS

Birender Singh & Ors. Respondents
through: None.

FAO No.22/2008

United India Insurance Co. Ltd. Appellant
through: Mr.K.L.Nandwani, Adv.

VERSUS

Urimila Devi & Ors. Respondents
through: None.

DATE OF DECISION:

%

24.04.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.**(Oral)

1. By placing reliance upon two decisions of the Hon'ble Supreme Court, learned counsel for the appellant managed to secure a notice to show cause from this court.

The decisions relied upon were AIR 2006 SC 1926 New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya & Anr. and 2006 (5) SCC 200 P.J.Narayanan Vs. UOI & Ors.

2. In the instant matters it is not in dispute that the appellant had issued a policy of insurance. It is not in dispute that the workman of the employer who was the insured under the policy had died/suffered 100% disability during course of employment and relatable to duties.

3. The only grievance urged in the appeal is to the liability fastened on the appellant to pay interest on the compensation assessed.

4. The appellant, bound by the terms of the policy of insurance, has acquiesced in the obligation to pay the compensation assessed to the dependents of the deceased workman who are respondents in FAO No.22/2008 as also to pay compensation to the workman who suffered 100% disability being the respondent in FAO No.21/2008.

5. The decisions relied upon by the appellant do not help the appellant at all. In Harshadbhai Amrutbhai's case, their Lordships of the Hon'ble Supreme Court held that where the policy of insurance specifically includes a clause excluding liability to pay interest on the compensation assessed, only then would the insurance company be not liable to pay interest

on the compensation assessed.

6. In P.J.Narayanan's case a writ petition was filed seeking a direction against the insurance company to delete the clause in the insurance policy which provided that in case of compensation to be paid under the Workmen's Compensation Act the insurance company will not be liable to pay interest. Their Lordships of the Hon'ble Supreme Court held that in the absence of a statutory liability compelling the insurance company to pay interest on the compensation assessed it would not be permissible for the court to issue a mandamus as prayed for.

7. The controversy pertaining to payment of issue of interest needs to be settled with reference to the language of Section 4A of the Workmen's Compensation Act 1923 which reads as under:-

"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 workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) where any employer is in default in paying the compensation due under this Act within one month

from the date it fell due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

PROVIDED that an order for the payment of penalty shall not be passed under Clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.--For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3A) The interest and the penalty payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be."

8. In the decision reported as Ved Prakash Garg Vs. Premi Devi & Ors. 1998 (1) ACJ 1, a question arose before the Hon'ble Supreme Court whether the phrase "liability arising under the Workmen's Compensation Act" as used in the proviso to Sub Section of Section 147 of the Motor Vehicles Act 1988 and as found in the proviso to clause (i) of Sub Section (I) of Section (II) of the insurance policy would cover only the

principal amount of compensation as computed by the Commissioner Workmen's Compensation or whether it would include liability to pay interest and penalty as imposed on the insured employer under contingencies contemplated by Section 43A (3)(a) and (b) of the Workmen's Compensation Act.

9. After examining the entire scheme of the Workmen's Compensation Act, the Hon'ble Supreme Court held that:-

A. Payment of interest and penalty are two distinct liabilities arising under the Workmen's Compensation Act.

B. Penalty is not a part and parcel of the legal liability of the employer to compensate his employee and since the insurer is under a contractual obligation to indemnify the employer for his legal liability the insurer is not liable to pay the penalty.

C. Liability to pay interest is part and parcel of legal liability of the employer to pay compensation upon penalty of payment of that amount within one month. Therefore, claim for compensation payable under the Workmen's Compensation Act along with interest thereon will have to be made good by the insurance company, jointly with the insured employer.

10. In Ved Prakash Garg's case the Hon'ble Supreme

Court noted the decision of the Karnataka High Court reported as Oriental Insurance Co. Ltd. Vs. Raju 1994 ACJ 191 wherein a Division Bench after noting the expressed terms of the insurance policy took the view that the policy did not extend to indemnify the insured in respect of interest and/or penalty which may be imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act. The Hon'ble Supreme Court noted that where there was an express exclusion clause qua the liability of interest under the insurance policy, as was found by the Division Bench of the Karnataka High Court, liability arising under Section 4A of the Workmen's Compensation Act to pay interest on the principal amount need not be met by the insurance company.

11. A focus analysis of the decision of the Hon'ble Supreme Court in Ved Prakash Garg's case makes it clear that the Hon'ble Supreme Court had made a distinction in a policy where no clause excluding liability of the insurance company to pay interest exists and a policy where a specific clause excluding liability to pay interest exists.

12. In the instant cases it is not the case of the appellant that the policy of insurance contained a covenant excluding liability to pay interest on the principal sum found

payable as compensation.

13. Thus, I find no merits in the appeals.

14. The appeals are dismissed.

15. No costs.

April 24, 2008
mm

PRADEEP NANDRAJOG, J.