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IN THE HIGH COURT OF DELHI

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FAO No.268/2004

The New India Assurance Co. Ltd. Appellant
through: Mr.Aditya Arora, Adv.

VERSUS

Smt. Momina Khatum & Ors. Respondents
through: Ms.Pratima N. Chauhan
for respondents No.1 to 7.

RESERVED ON : 13.03.2008

DATE OF DECISION

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19.03.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

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

: **PRADEEP NANDRAJOG, J.**

1. The present appeal has been preferred by the Insurance Company under Section 30 of the Workmen's Compensation Act 1923 challenging the award dated 09.06.2004 passed by the Commissioner, Workmen's Compensation, Delhi.

2. Vide impugned award respondent Nos.1 to 7 (hereinafter referred to as the dependents) have been awarded a sum of Rs.1,98,060/- as compensation along with interest @12% per annum from the date of the accident.

3. Two points have been urged in the present appeal. The

first point urged is whether the Commissioner, Workmen Compensation was justified in entertaining the claim for compensation instituted by respondents No.1 to 7 in light of the fact that they did not serve upon the employer the notice of accident as required under Section 10 of the Workmen's Compensation Act 1923. Second point urged is that whether the Insurance Company is liable to pay interest and if yes, from what date.

4. The relevant facts are that Mr.Jafar Ali (hereinafter referred to as the deceased), the husband of respondent No.1 and the father of respondents No.2 to 7 was employed by respondent No.8 Mr.Kuljeet Singh as a driver. On 10.7.2000, while on duty, and driving a truck bearing No.DL-1GA-0033 in respect whereof respondent No.8 had obtained an insurance cover, the deceased died at a road accident.

5. The legal heirs of the deceased filed a claim petition before the Commissioner, Workmen's Compensation against the respondent No.8 and the appellant claiming compensation from them.

6. Respondent No.8 admitted that the deceased was employed as a driver by him and had died at a road accident while driving a truck owned by him. The appellant insurance company admitted its liability as the insurer of the truck.

7. The Commissioner, Workmen Compensation had taken the age of the deceased and his last drawn salary as 35 years and Rs.2,000/- per month respectively.

8. Considering the admitted facts, the Commissioner, Workmen Compensation has applied the relevant factors as per Schedule IV to Section 4 of the Workmen's Compensation Act 1923. So applying Rs.1,98,060/- has been held payable as compensation to the dependents. As already noted, interest @12% per annum from the date of the accident is also awarded.

9. As regards the first contention urged by the learned counsel for the insurance company it is relevant to note the Section 10 of the Workmen's Compensation Act 1923 which reads as under:-

"Section 10 - Notice and claim

(1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death:

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease:

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work the period of two years shall be counted from the day the workman gives notice of the disablement to his employer:

Provided further that if a workman who, having been employed in an employment for a continuous period,

specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the - entertainment of a claim-

(a) if the claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this subsection, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several

employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The State Government may require that any prescribed class of employers shall maintain at these premises at which workmen are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice book is maintained, by entry in the notice book."

10. A reading of Section 10(1) together with Clause (b) of fourth proviso makes it clear that failure of the injured workman or dependents of the deceased workman as the case may be to serve a notice of the accident upon the employer is not fatal to the claim for compensation preferred by the workman or dependents if the employer has the knowledge of the factum of the accident.

11. At this juncture, it is most important to note the letter dated 11.7.2000 (the next date after the accident) Ex.AW-1/3 written by the employer of the deceased Mr.Kuljeet Singh and addressed to SHO, PS Kodrama.

12. In the afore-noted letter the employer has informed regarding the accident of his truck bearing No.DL-1GA-0033 on 10.7.20007 and death of the deceased in the said accident.

13. In view of the letter dated 11.7.2000 Ex.AW-1/3 it is

clear that the employer of the deceased had knowledge of the factum of the accident as also the death of the deceased in the said accident.

14. In such circumstances Clause (b) of fourth proviso to Section 10(1) is attracted and therefore the Commissioner, Workmen Compensation was justified in entertaining claim for compensation filed by the dependents of the deceased notwithstanding that the dependents did not serve a notice of the accident upon the employer of the deceased.

15. As regards next contention it is urged by the learned counsel for the insurance company that in view of the decisions of the Supreme Court reported as *P.J.Narayan vs. Union of India & Ors.* 2004 ACJ 52 and *New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya & Anr.* AIR 2006 SC 1926 the insurance company is not liable to pay the interest awarded by the Commissioner, Workmen Compensation.

16. The said contention advanced by learned counsel for the insurance company has to be adjudicated with reference to Section 4-A 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."

17. In the decision reported as Ved Prakash Garg v 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 employed by the proviso to sub-section (1) of Section 147 of the Motor Vehicles Act, 1988 and as found under the proviso to clause (i) of sub-section (1) of Section II of the Insurance Policy would cover only the principal amount of compensation as computed by the Workmen's Commissioner or

whether it can also include interest and penalty as imposed on the insured employer under contingencies contemplated by Section 4A(3)(a) and (b) of the Workmen's Compensation Act.

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

- I. Payment of interest and penalty are two distinct liabilities arising under the Workmen Compensation Act.
- II. Penalty is not a part and parcel of the legal liability of the employer to compensate his employee and since the insurer is under contractual obligation to indemnify the employer for his legal liability the insurer is not liable to pay the penalty.
- III. Liability to pay interest is part and parcel of legal liability of the employer to pay compensation upon default 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.

19. In the 2 decisions relied upon by the learned counsel for the insurance company the Supreme Court has held that if there is a clause in the insurance policy that the insurance company would not take on the liability for the interest then alone the insurance company is not liable to pay the interest.

20. This aspect of the matter was considered by the Hon'ble

Supreme Court in Ved Prakash's case (supra).

21. In Ved Prakash's case (supra) 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 Bench of 2 learned Judges of the Karnataka High Court after noting the express terms of the insurance policy in that case took the view that the policy did not extend to indemnify the insured in respect of any interest and/or penalty which may be imposed on the insured on account of his failure to comply with the requirement of the Workmen's Compensation Act. The Hon'ble Supreme Court noted that there was an express exclusion clause qua the liability of the interest under the insurance policy and therefore the Karnataka High Court rightly came to the conclusion on the facts of that case that liability arising under Section 4-A of the Workmen's Compensation Act to pay interest on the principal amount as imposed upon the insured was not required to be met by the insurance company.

22. A focussed analysis of the judgment in Ved Prakash's case (supra) makes it clear that the Hon'ble Supreme Court made a distinction when there is no clause in the policy excluding the liability of the insurance company to pay interest vis-a-vis a policy which excludes the payment of interest by the insurance company.

23. In the former case the insurance company is liable to pay the interest as awarded by the Commissioner, Workmen's Compensation while in the latter case it is not liable to indemnify

the the insured in respect of the interest as awarded by the Commissioner, Workmen's Compensation.

24. In the instant case, in light of the law laid down by the Supreme Court in Ved Prakash's case (supra) and the categorical finding by the Commissioner, Workmen's Compensation that the insurance company has failed to bring on record any clause in the policy which exonerated it from the payment of the interest, I find no infirmity in the decision of the Commissioner, Workmen Compensation in directing the insurance company to pay interest @12% per annum to the dependents.

25. Lastly, learned counsel for the insurance company contended that in view of the decision of the Supreme Court reported as National Insurance Company Ltd. vs. Mubasir Ahmed & Anr. 2007 (2) Scale 455, the Commissioner, Workmen's Compensation should have awarded interest only from the date of the adjudication of claim and not from the date of the accident.

26. Section 3 of the Workmen's Compensation Act 1923 deals with 'employer's liability for compensation'.

27. Section 4 of the Workmen's Compensation Act 1923 deals with 'amount of compensation'.

28. Section 4-A of the Workmen's Compensation Act 1923 deals with the time for payment of compensation as computed under Section 4. Sub-section 1 thereof mandates that compensation shall be paid as soon as it falls due. Sub-section 2 contemplates a situation wherein the employer though accepting his

liability to pay compensation to his workman disputes the extent of claim of compensation and in such case sub-section 2 enjoins him to make provisional payment based on the extent of accepted liability by depositing it with the Commissioner, Workmen's Compensation or paying it directly to the workman.

29. In case where provisional payment has to be made by the insured employer as per Section 4-A(2) of the Workmen's Compensation Act then the one month period contemplated under Section 4-A(3) would start running from the date such provisional payment becomes due.

30. But, in cases where the employer totally disputes his liability to pay on the grounds like the injured person being not his employee or that the accident was caused to him at a time when he was not in the course of employment or that the accident caused to him did not arise out of his employment then Section 4-A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner, Workmen's Compensation.

31. In Ved Prakash's case (supra) after noting the afore-noted 2 situations the Hon'ble Supreme Court has held that in either case the Commissioner, Workmen's Compensation would be justified in directing payment of interest not only from the date of the award but also from the date of the accident concerned.

32. Therefore a discretion has been vested in Commissioner, Workmen's Compensation with regard to the date of the payment of

the interest which he has to exercise judiciously keeping in mind the nature of the dispute raised by the employer. If a bona fide dispute is raised by the employer then Commissioner, Workmen's Compensation should award interest from the date of the adjudication of the claim. But where a wholly frivolous dispute was raised by the employer then Commissioner, Workmen's Compensation should award interest from the date of the accident.

33. In Mubasir's case (supra) the Hon'ble Supreme Court dealt with the specific situation where a workman suffers from an injury resulting in permanent partial disablement and the injury is not specified in Schedule I to the Section 4 of the Workmen's Compensation Act 1923. In such a case, loss of earning capacity suffered by the workman has to be quantified by a qualified medical practitioner and on the basis of which compensation payable to the workman is to be computed. Noting that in such cases employer would not be in a position to either admit or pay compensation unless loss of earning capacity is quantified by a qualified medical practitioner, the Hon'ble Supreme Court has held that the compensation becomes due on the date of the adjudication of the claim.

34. This decision has no application in cases where a workman dies or suffers from an injury resulting in total disablement, permanent partial disablement (injury specified in Schedule-I) and temporary disablement as a result of an accident arising out of and in course of his employment because in said cases

computation of the compensation is based on a formula on determined indices.

35. Since the instant case is a case of death of workman the Commissioner, Workmen's Compensation was justified in awarding interest from the date of the accident.

36. I find no merits in the instant appeal. The same is dismissed.

37. The impugned award dated 09.06.2004 is affirmed.

38. Costs shall follow.

March 19, 2008
d.k.

(PRADEEP NANDRAJOG)
JUDGE