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IN THE HIGH COURT OF DELHI

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FAO No.378/2006

National Insurance Co.Ltd. Appellant
through: Mr.Pradeep Gaur, Advocate and
Mr.Dev Dutt, Advocate.

VERSUS

Kanshi Ram & Ors. Respondents
through: Mr.Sunil Sehrawat, Advocate and
Mr.Gaurav Malhotra, Advocate
for respondents No.1 and 2.

Mr.Basant Kumar, Advocate
for respondent No.3.

DATE OF DECISION:

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01.05.2008

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. Heard learned counsel for the parties.
2. The instant appeal filed by the insurance company limits challenge to the order dated 11.9.2006 passed by the Commissioner Workmen's Compensation insofar it hold that 12% interest on the compensation amount with effect from the

date of the death of the deceased workman shall be borne by the insurance company.

3. It is urged at the hearing today that there is no statutory liability cast by any law requiring insurance company to pay interest and that the policy of insurance does not contain a covenant requiring insurance company to pay interest if a claim is allowed under the Workmen's Compensation Act. Second contention urged is that the liability to pay compensation accrues on the day the same is adjudicated and hence the interest becomes payable with effect from the date liability is adjudicated upon.

4. While fastening liability to pay interest the Commissioner Workmen's Compensation has noted a decision of the Hon'ble Supreme Court reported as Ved Prakash vs. Premi 1998 ACJ (SC) 1.

5. For the first opposition learned counsel for the appellant cites PJ Narayan vs. UOI & Ors. 2004 ACJ 52 and New India Assurance Co. vs. Harshadbhai Amrutbhai Modhiya & Anr. AIR 2006 SC 196 the counsel also cites the decision reported as AIR 1976 SC 222 Pratap Narayan Singh Deo vs. S.Sriniwas Sabata & Anr.

6. The said contention advanced by the learned counsel for the insurance company needs to be adjudicated

upon with reference to Section 4-A of the Workmen's Compensation Act 1943 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."

7. In Ved Prakash's case (supra) 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 1 of Section 147 of the M.V.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 Commissioner Workmen's Compensation or whether it includes interest and penalty imposed on the employer under contingencies contemplated by Section 4A(3)(a) and (b) of the Workmen's Compensation Act.

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

- (1) Payment of interest and penalty are two distinct liabilities arising under the Workmen's Compensation Act.
- (2) 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.
- (3) 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 1 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.

9. The decision in PJ Narayan's case (supra) relates to a writ petition filed seeking mandamus to be issued against the insurance company requiring it to delete from the policy of insurance a clause that insurance company would not be liable to pay any interest on the compensation which may be awarded by the Commissioner Workmen's Compensation, a relief which was declined.

10. The decision cannot be read as laying down the law that the insurance company cannot be fastened with liability to pay interest on the compensation assessed under the Workmen's Compensation Act.

11. In Harshadbhai Modhiya's case (supra) the Hon'ble Supreme Court held that where there existed a clause in the policy of insurance excluding liability to pay interest, in view of a specific covenant between the insurer and the assured, the insurance company would not be liable to pay interest on the principal amount awarded by the Commissioner Workmen's Compensation. Pratap Narayan Singh Deo's case (supra) did not deal with issue of interest as none was raised.

12. A focussed analysis of the judgment of the Hon'ble Supreme Court in Ved Prakash's case (supra) makes it clear that the Hon'ble Supreme Court made a distinction in policies which excluded a clause pertaining to liability of the insurance

company to pay interest vis-a-vis a policy which was silent on the issue of payment of interest by the insurance company.

13. It would be interesting to note that 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.

14. I may note that in the instant case it is not the case of the insurance company that the policy of insurance excluded liability to pay interest by incorporating a clause in the contract in said terms.

15. On the issue whether insurance company would be liable to pay interest on the compensation assessed with effect from the date of the death of the workman, the issue has been receiving judicial consideration and was the subject matter of my decision dated 19.3.2008 in FAO No.268/2004 New India Assurance Co. Ltd. vs. Musammat Momina Khatum. In paras 25 to 35 I had observed as under:-

- “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."

16. It is no doubt true that in case of injury or death information would be given to the employer and never to the insurance company because the injured workman or in case of death the dependents of the deceased workman would not be having the particulars of the insurance company and to that extent it may be possible for the insurance company to maintain an argument that liability to pay interest qua the insurance company has to be restricted from the date intimation of the death or the accident was given to the insurance company.

17. But noting that the provisions of the Workmen's Compensation Act are beneficial legislation also noting the fact that not a single case has been noted by the Court where the insurance company voluntarily settles the claim under the Workmen's Compensation Act I refuse to go for the bite.

18. In the instant case, the fact of the death of the workman came to the knowledge of the insurance company, if not earlier, at least when notice was received from the office of

the Commissioner Workmen's Compensation intimating that a claim had been received. No reasons are forthcoming as to why the insurance company did not proceed to forthwith deposit the compensation payable.

19. It would not be irrelevant to note that the factum of death, the vehicle being insured, the nature of employment of the deceased workman and that he died during course of employment were all not in dispute. When the insurance company received notice of claim from the Commissioner Workmen's Compensation all that was required to be done was to refer to the formula prescribed under the Workmen's Compensation Act and apply the applicable indices to compute the compensation payable.

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

21. No costs.

May 01, 2008
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PRADEEP NANDRAJOG, J.