

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 01.11.2012

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through : Mr D.D. Singh, Advocate

versus

BHOGENDER JHA & ANR

..... Respondents

Through : Mr. N.K. Jha, Advocate for
respondent no.1.

Mr Dheeraj Kumar, Advocate for
respondent no.2.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. By way of this appeal under Section 30 of the Employees Compensation Act, 1923 (hereinafter referred to as 'the Act'), challenge is made to the impugned order dated 05.10.2011 by which the Commissioner, Employees Compensation has directed the insurance company to pay penalty @ 50% on the principal amount and also directed to pay 12% interest per annum on the compensation amount from the date of accident till its realization.

2. Briefly, the background of the case is as under:-

An application under Section 4A of the Act was filed before the Commissioner, Employees Compensation Act by the claimant Bhogender

Jha i.e., respondent no.1 herein stating therein that he had sustained injuries on 28.04.2002 while working with M/s Ahluwalia Contracts (India) Ltd. i.e. respondent no.2 herein due to which he became disabled to the extent of 20%. The management i.e. respondent no.2 did not pay the compensation amount within 30 days of the accident as such he had filed the claim before the Commissioner. By the order of the Commissioner dated 13.11.2007, a compensation amount of ₹ 87,057/- was awarded to him and the said amount has already been deposited by the appellant and the respondent no.1 has already received the same. It was further stated that the appellant was to deposit the amount of compensation within one month of the accident but the compensation has been paid to him after 6 years of the accident and that too after the orders of Commissioner, therefore, he is not entitled to interest @ 12 % per annum on the compensation amount from the date of accident till its realisation and the penalty to the extent of 50% of the principal amount of compensation as per Section 4A of the Act.

3. Notice of the aforesaid application was sent to the appellant i.e. insurance company as well as to the respondent no.2. The appellant and the respondent no.2 contested the claim before the Commissioner. The respondent no.2 contended that that if workers are insured under the Workmen Compensation policy, the appellants are liable to pay the compensation as well as interest and the penalty and the management has no liability to pay the same. It was contended that the appellant/insurance company had already made payment of compensation, as such if any interest and penalty was to be levied, the same was to be recovered from appellant/insurance company. The stand of the insurance company before

the Commissioner was that the insurance company was not liable to pay the interest and penalty as they had already made the payment of compensation amount. Their further stand was that the compensation fell due only on the adjudication by the court i.e. on 13.11.2007 and not on the date of accident. Further, it was their stand that in a case where disability was assessed by the Board of Doctors, the compensation falls due only on the adjudication and not before it.

4. After hearing the parties, the commissioner held that it was the liability of the appellant to pay interest as well as the penalty amount. Aggrieved with the same, present appeal is filed.

5. The learned counsel for the appellant has contended that the appellant-company is not liable to pay interest and penalty to the respondent. It is contended that total amount of interest and penalty comes to ₹ 1,03,347/-, out of which interest amount comes to ₹ 59,818/- and the penalty amount comes to ₹ 43,529. It is contended that under the provisions of the Act, the insurance company is not liable to pay penalty and interest. It is further contended that it is the employer i.e., respondent no.2 who is liable to pay the same.

6. On the other hand, ld. counsel for the respondent no. 1 and 2 have contended that it is the liability of the insurance company to pay penalty as well as interest amount. It is further contended that the starting point for payment of interest within the meaning of Section 4A(3)(a) of the Act cannot be the date of accident but it is the date of adjudication of the claim. It is

contended that the impugned order is legal and valid and the appeal is liable to be rejected.

7. Section 3 of the Act deals with employer's liability for compensation. Section 3(1) provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". Section 4 of the Act deals with the amount of compensation to be paid. Under Section 4A(1) of the Act, compensation is to be paid at the rate provided under Section 4 as soon as the personal injury was caused to respondent. Section 4A(3) casts liability to pay interest if any employer defaults in paying compensation due under the Act within one month from the date it fell due.

8. As regards liability of payment of interest is concerned, it has been held by the Apex Court in **Ved Prakash Garg v. Premi Devi and Ors.**; **AIR 1997 SC 3854** that the Insurance Company is liable to pay not only the principal amount of compensation payable by the insurer employer but also interest thereon if ordered by the Commissioner to be paid by the employer. Insurance company is liable to meet claim for compensation along with interest as imposed on insurer employer by the Act on conjoint operation of Section 3 and 4A(3)(a) of the Act. The relevant para of the aforesaid judgment is reproduced as under:-

“On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest thereon, if ordered by the Commissioner to be paid by the insured employers. Reason for

this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the M.V. Act read with the identical provisions under the very contracts of insurance reflected by the policy which would made the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer under Section 3 read with Section 4-A of the Compensation Act. All these provisions represent a well-knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier while discussing the scheme of Section 4-A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one month it is not paid by the employer then as per Section 4-A (3) (a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose breadwinner might have either been seriously injured or might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein. It is a statutory elongation of the liability of the employer to make good the principal amount of compensation within permissible time-limit during which interest may not run but otherwise liability of paying interest on delayed compensation will *ipso facto* follow. Even though the Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section 4-A (3) (a) still the liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally liable to be discharged by

the insured employer. Consequently such imposition of interest on the principal amount would certainly partake the character of the legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not de hors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer *qua* his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under Section 4-A (3) may start running for the purpose of attracting interest under sub-clause (a) thereof in case where provisional payment has to be made by the insured employer as per Section 4-A (2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier 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 and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of Section 4-A (3) (a) of the Compensation Act.”

9. The other question which arises for consideration is whether the interest would be payable 30 days after adjudication by the Commissioner or

30 days after the date of accident.

10. The Supreme Court in **Pratap Narain Singh Deo vs. Srinivas Sabata and Anr.;** (1976) 1 SCC 289 has held that the liability arises as soon as personal injury is caused to the workman and employer has to pay the compensation in accordance with Section 4 of the Act, the failure to pay entails liability to pay interest and penalty under Section 4A of the Act. The relevant para of the judgment is reproduced as under:-

“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 an 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 settling 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.”

11. As regards grant of penalty is concerned, the Supreme Court in **Ved Prakash Garg v. Premi Devi and Ors.** (supra) the Supreme Court held that the insurance company is not liable to pay the amount of penalty and it is the liability of the employer alone.

12. Following aforesaid judgment, the Supreme Court in **New India Assurance Co. Ltd. v. Shiv Singh and Anr.: (2000) 9 SCC 227** has held that the insurance company is not liable to pay the amount of penalty as determined by the Commissioner. The relevant portion of the judgment is reproduced as under:-

“4. The only question raised before us by the learned counsel for the appellant is that the Workmen’s Compensation Commissioner could not have held the insurance company liable for payment of the amount of penalty under Section 4A(3) of the Workmen’s Compensation Act. This question was considered by this Court in Ved Prakash Garg. V. Premi Devi and Ors. AIR 1997 SC 3854 and it was held:

“As a result of the aforesaid discussion, it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen’s Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4A Sub-section(3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen’s Commissioner under Section 4A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.”
(underlining added)

13. In Smt. Rambhaben and Rashikbhai Madhabhai Koli v. Bachubhai Sukhabhai and New India Assurance Co. Ltd.: 2005 ACJ 621, it has also been held that the insurance company can’t be held liable to pay the penalty

amount. The relevant portion of same is reproduced as under:-

“7. With respect to penalty also, the Commissioner has given no reason as to why the penalty has not been awarded. Under Section 4A of the Act, 50% of the compensation payable can be awarded as penalty if the employer commits a default in paying the compensation within a month from the date it fell due. The compensation falls due immediately when the accident occurs. Undisputedly, no amount has been paid to the appellants within one month of the accident or till the application was disposed of by the Commissioner. In such circumstances, penalty must be awarded. However, penalty cannot be made payable by the insurance company as it is trite law that the insurance company is not liable to pay penalty on the compensation. Therefore, Respondent No. 1 will be liable to pay penalty of 50% of the amount of compensation.”

(underlining added)

14. In view of above discussion, the appeal is partly allowed. The grant of interest as awarded by the Commissioner to be payable by the appellant is upheld. As regards liability on the insurance company to pay the penalty to the respondent no.1, the same is set aside. The respondent no. 1 shall be free to recover the same from the respondent no. 2.

The appeal stands disposed of accordingly.

The trial court record be sent back forthwith.

VEENA BIRBAL, J

NOVEMBER 1, 2012

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