

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 6TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

MISCELLANEOUS FIRST APPEAL NO.103486 OF 2018 (WC)



BETWEEN:

THE BRANCH MANAGER,
NATIONAL INSURANCE CO. LTD.,
MELLIGERI COMPLEX, BAGALKOT.
NOW REPRESENTED BY ITS AUTHORIZED OFFICER,
RESP.NO.3.

...APPELLANT

(BY SRI. SURESH S. GUNDI, ADVOCATE)

AND:

1. SABU S/O JOSEPH
AGE: 47 YEARS,
OCC: MECHANICAL LABOUR (NOW NIL),
R/O: NEHRU NAGAR, BELAGAVI-590010.
2. SHRIKANT S/O SHANKREPPA MIRJI
AGE: 44 YEARS, OCC: CONTRACTOR,
R/O: HOSUR-587117, TQ/DIST: VIJAYAPURA.
3. THE MANAGING DIRECTOR,
NANDI SUGAR CO-OP SOCIETY LTD.,
KRISHNA NAGAR, R/O: HOSUR-587117,
TQ/DIST: VIJAYAPURA.

...RESPONDENTS

(BY SRI. S.B. NAIK, ADVOCATE FOR R1 (ABSENT);
R2 & R3-SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 30(1) OF THE EMPLOYEES COMPENSATION ACT, PRAYING TO SET ASIDE/MODIFY THE JUDGMENT DATED 03.08.2018 PASSED IN ECA 96/2014 ON THE FILE OF THE MEMBER MACT NO.III BAGALKOT & ETC.

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 30.01.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:'

CORAM: THE HON'BLE DR. JUSTICE K.MANMADHA RAO

Digitally signed
by
MOHANKUMAR
B SHELAR
Location: High
Court of
Karnataka,
Dharwad Bench

CAV JUDGMENT

The present appeal is filed by the Insurance Company under Section 30(1) of the Employees Compensation Act, 1923 (hereinafter referred to as "the EC Act" for short) to modify the judgment and award dated 03.08.2018, in ECA No.96/2014 on the file of the M.A.C.T. No.III, Bagalkot (hereinafter referred to as "the Commissioner" for short).

2. The appellant-Insurance Company herein is respondent No.3, respondent No.1 herein is the claimant and respondent Nos.2 and 3 herein are respondents No.1 and 2 before the Commissioner.

3. For convenience, the parties herein are referred to as per their rankings before the Commissioner.

4. The claimant filed claim petition under Section 22 of the EC Act against the respondents claiming compensation of Rs.7,50,000/- with interest at the rate of 18% per annum with cost till the date of realization of award amount.

5. The brief facts of the case are that:-

The petitioner/claimant was employed as a helper under respondent No.1, a contractor engaged with respondent No.2 factory, and was earning wages of Rs.500/- per day. At the time of the incident, the claimant was aged about 43 years and was hale and healthy.

On 08.08.2014, while discharging his duties as a mechanical labourer on the upper roof of the factory premises as per the directions of respondents No.1 and 2, at about 5.00 PM, the claimant slipped and fell, resulting in grievous injuries to both his legs. He was immediately provided first aid at the hospital of respondent No.2 factory, thereafter referred to Galagali Primary Health Center, and subsequently to Sai Adhar Hospital, Mudhol, where he underwent surgery involving insertion of rod and screws. He remained admitted as an inpatient for about 30 days, incurred medical expenses of approximately Rs.2,00,000/-, and continues to take treatment as an outpatient.

The claimant further states that due to the injuries sustained in the accident, he has suffered permanent disability, resulting in total loss of earning capacity. He was

the sole breadwinner of his family and sustained the injuries without any fault on his part, leading to severe financial, physical, and mental hardship. Respondents No.1 and 2, having knowledge of the incident, visited him in the hospital and assured payment of medical expenses and compensation. However, they failed to honor the said assurance. Consequently, the claimant issued a legal notice on 26.09.2014 to respondents No.1 and 2 demanding compensation, which was duly served.

Respondent No.1, in reply, admitted the employment and contended that he had insured the risk with respondent No.3, while denying liability to pay compensation. The claimant asserts that the accident occurred during the course and out of employment, that the insurance policy with respondent No.3 was valid on the date of accident, and therefore, all respondents are jointly and severally liable to pay compensation.

6. After service of notice, respondent No.1 appeared through his counsel, filed his written statement and admitted with respect to the employment, employer-

employee relationship, daily wages of the claimant, time of the accident. He further admitted that the accident had taken place during the course of the employment. However, respondent No.1 contended that he had insured the employment risk with respondent No.3 and therefore, denied personal liability to pay any compensation to the claimant.

7. Respondent No.2, despite due service of notice, failed to appear before the Commissioner and was placed *ex-parte*.

8. Respondent No.3 - Insurance Company, entered appearance through counsel and filed its objections denying the material averments made in the petition and disputed its liability, and prayed for dismissal of the claim petition with costs.

9. Based on the pleadings, oral and documentary evidence, the Commissioner partly allowed the claim petition and awarded the compensation of Rs.3,61,150/- with interest at the rate of 12% per annum after one month

of accident till its realization of full compensation amount to the claimant from respondent No.3 – Insurance Company.

10. The learned counsel for the appellant-Insurance Company would contend that the claimant is a resident of Belagavi, the contractor is functioning at Hosur, Vijayapura, and the insurance policy was issued by the Vijayapura Branch Office. In spite of this, the claim petition was instituted before the Commissioner in clear contravention of Section 21 of the EC Act. The Commissioner, upon noticing the absence of jurisdiction, ought to have either dismissed the claim petition or transferred the same to the competent Commissioner as contemplated under Section 21 of the EC Act. Failure to do so vitiates the entire proceedings.

11. It is contended that the impugned order is opposed to the Employees' Compensation Insurance Policy, including its Schedule, Terms, Exceptions and Conditions, issued to respondent No.2–contractor. The policy is purely a contract of indemnity, under which the primary statutory obligation to pay compensation within thirty days from the

date of accident rests upon the employer/contractor, who may thereafter seek indemnification from the insurer. The policy specifically excludes liability towards interest on compensation and reimbursement of medical expenses, and no premium was collected for the said heads. The actual policy containing the applicable terms and conditions has been produced before this Court by way of an Interlocutory Application, which unequivocally establishes that medical expenses and interest are outside the scope of coverage. Hence, fastening liability on the insurer for interest and medical expenses is contrary to the contract of insurance.

12. Further, in terms of Exclusion Clauses (d) and (e) of the policy, the insurance company is expressly absolved of liability under any law to pay interest on the compensation amount and medical expenses incurred towards treatment of any injury sustained by an employee. The Commissioner has misconceived the provisions governing contracts of insurance as codified in the policy and has erroneously directed the appellant/insurer to pay amounts expressly excluded under the policy.

13. It is also contended that the insurance policy covers four helpers with a declared annual wage of Rs.1,92,000/- for all four employees, which works out to Rs.48,000/- per annum and Rs.4,000/- per month per employee, based on which the premium was paid. Contrary to this declaration, the Commissioner assessed the wage at Rs.280/- per day and arbitrarily rounded it off to Rs.300/- per day without any legal or factual basis.

14. The learned counsel for the appellant-Insurance Company had raised the below substantial questions of law for consideration of this Court:-

(i) Whether the judgment and Award passed by the Commissioner for Employee's Compensation is in accordance with Section 4(2A) of the Employees' Compensation Act, as much as imposing liability of the medical expenses on the appellant in view of the Exclusion clause contained in the contract of policy?

(ii) Whether the Commissioner is justified in coming to the conclusion that the Respondent No.3/appellant is liable to pay interest as per Section 4-A of the Employees' Compensation Act, as against exclusion clause in the policy condition?

(iii) Whether the Commissioner is justified in considering the wage of the claimant as Rs.9,000/- per month which is against the provision of section 4 (1-B) of Employees' Compensation Act and as against the wage shown in the policy as per the insured i.e., Rs.4,000/- per month on the basis of which insurance premium is collected.

15. In support of his contentions, learned counsel for the appellant-Insurance Company has placed reliance on the judgment of the Apex Court in the case of ***New India Assurance Co. Ltd. V. Harshadbhai Amrutbhai Modhiya and another*** reported in ***(2006) 5 SCC 192.***

16. Heard learned counsel appearing for the appellant and perused the material available on record. None appears for respondent No.1.

17. Upon hearing the learned counsel for the appellant and on a careful examination of the impugned award, this Court finds that the liability of the insurance company under the Employees' Compensation Act, 1923 is required to be examined strictly in accordance with the

statutory scheme of the EC Act and the terms of the contract of insurance.

18. Further, Section 4 of the EC Act prescribes the manner of computation of compensation, while Section 4-A mandates that the employer shall pay compensation as soon as it falls due and provides for interest and penalty in the event of default. Thus, the obligation to pay compensation together with interest and penalty is statutorily fastened on the employer alone.

19. The EC Act does not contain any provision analogous to the MV Act compelling the insurer to satisfy the entire award in favour of the claimant. The right of the claimant under the EC Act is to recover compensation from the employer, and not directly from the insurer. The liability of the insurance company arises only by virtue of a contract of insurance entered into with the employer and is therefore one of indemnification, governed exclusively by the terms and conditions of the policy.

20. The Apex Court in **Harshadbhai Amrutbhai Modhiya's** case (*supra*) while interpreting Section 17 of the EC Act, has categorically held that the said provision merely prohibits a contract which absolves or reduces the liability of the employer vis-à-vis the workman, but does not prohibit the employer and insurer from entering into a contract limiting the extent of indemnification. It has been clearly laid down that, in the absence of a statutory mandate, contractual exclusions in an insurance policy excluding liability towards interest or penalty must be given effect to. The Apex Court in paragraph 24 held as under:

"24. Section 17 of the Workmen's Compensation Act voids only a contract or agreement whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment and insofar as it purports to remove or reduce the liability of any person to pay compensation under the Act. As my learned Brother has noticed, in the Workmen's Compensation Act, there are no provisions corresponding to those in the Motor Vehicles Act, insisting on the insurer covering the entire liability arising out of an award towards compensation to a third party arising out of a motor accident. It is not brought to our notice that there is any other law enacted which stands in the way of an insurance company and the insured entering into a contract confining the obligation of the insurance company to indemnify to a particular head or to a particular amount

when it relates to a claim for compensation to a third party arising under the Workmen's Compensation Act. In this situation, the obligation of the insurance company clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. Unlike the scheme of the Motor Vehicles Act the Workmen's Compensation Act does not confer a right on the claimant for compensation under that Act to claim the payment of compensation in its entirety from the insurer himself. The entitlement of the claimant under the Workmen's Compensation Act is to claim the compensation from the employer. As between the employer and the insurer, the rights and obligations would depend upon the terms of the insurance contract. Construing the contract involved here it is clear that the insurer has specifically excluded any liability for interest or penalty under the Workmen's Compensation Act and confined its liability to indemnify the employer only against the amount of compensation ordered to be paid under the Workmen's Compensation Act. The High Court was, therefore, not correct in holding that the appellant Insurance Company, is also liable to pay the interest on the amount of compensation awarded by the Commissioner. The workman has to recover it from the employer."

21. In the present case, the insurance policy placed on record expressly excludes liability towards payment of interest under Section 4-A of the EC Act, and it is not disputed that no additional premium was paid to cover such liability. In view of the law declared by the Apex Court, the Commissioner committed a clear error of law in fastening liability on the appellant-Insurance Company to pay interest

on the compensation amount. Consequently, the liability to pay interest under Section 4-A of the EC Act rests solely upon the employer not on the insurer.

22. Similarly, the EC Act does not treat medical expenses as a component of “compensation” payable under Section 4. Reimbursement of medical expenses is not a statutory liability imposed on the insurer under the EC Act. Where the insurance policy specifically excludes liability towards medical expenses incurred for treatment of injuries sustained by an employee, and no premium is paid for such coverage, the insurer cannot be fastened with liability contrary to the terms of the contract. Any direction requiring the insurer to reimburse medical expenses, despite an express exclusion in the policy, is therefore unsustainable in law and beyond the scope of the insurer’s contractual obligation.

23. With regard to the determination of wages, Section 4(1)(b) read with Section 2(1)(m) of the EC Act requires compensation to be computed on the basis of

wages proved in accordance with law. In the present case, the insurance policy and its schedule disclose that coverage was obtained by declaring specific wages for the category of employees concerned, and premium was paid on that basis. In the absence of reliable and legally acceptable evidence adduced by the claimant to establish wages in excess of what was declared and insured, the Commissioner was not justified in arbitrarily assessing higher wages without any supporting material.

24. In view of the above, the coverage was obtained by declaring annual wages of Rs.1,92,000/- for four helpers, which works out to Rs.4,000/- per month per employee, and that premium was paid on that basis alone. Hence, considering the wages of the claimant at Rs.4,000/-, 60% of Rs.4,000/- comes to Rs.2,400/- (Rs.4000/- x 60%). In respect of loss of earning capacity of the claimant is taken into consideration to multiply the same from the relevant factor i.e., Rs.2400/- x 17% disability = 408. As per Schedule IV of the EC Act, for the age of 43 years, the relevant factor 175.54, taken by the Commissioner is just

and proper. Considering the same, the loss of earning capacity of the claimant is re-worked as $408 \times 175.54 = 71,620/-$.

25. In view of the aforesaid statutory provisions and the binding declaration of law by the Apex Court, the impugned award insofar as it fastens liability on the appellant-Insurance Company beyond the terms of the policy is legally unsustainable and warrants interference to that extent, while leaving the employer's statutory liability under the Employees' Compensation Act intact.

26. When the liability of the insurer is contractually restricted to indemnification based on the declared wages under the policy, the Commissioner was bound to compute compensation strictly in accordance with such declared wages.

27. In view of the foregoing discussions, calculation, and the law laid down by the Apex Court in ***Harshadbhai Amrutbhai's case (supra)***, the claimant is entitled for the

compensation of Rs.71,620/- as against Rs.3,61,150/- awarded by the Commissioner.

28. In the result, this Court proceeds to pass the following:-

ORDER

- (i) This appeal is ***allowed in part.***
- (ii) The judgment and award dated 03.08.2018, in ECA No.96/2014 on the file of the M.A.C.T. No. III, Bagalkot is hereby modified.
- (iii) The claimant is entitled for the total compensation of Rs.71,620/- as against Rs.3,61,150/- awarded by the Commissioner.
- (iv) The appellant-Insurance Company shall be liable only to pay the said amount and shall not be liable to pay medical expenses or interest, the liability towards medical expenses and interest,

if any, being fastened exclusively on respondent Nos.1 and 2.

- (v) The appellant–Insurance Company shall deposit Rs.71,620/-, if not already deposited, within four weeks, and any excess amount deposited shall be refunded to it.
- (vi) On deposit, the amount shall be released in favour of the claimant, in accordance with law.

No order as to costs.

**Sd/-
(DR. K.MANMADHA RAO)
JUDGE**

MBS,
CT:VP