

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 410 OF 2000

1. Smt. Kalpana Rajendra Kumawat,
Age ; 25 years, Occu. Household
2. Viki Rajendra Kumawat,
Age : 8 years, occu. Nil
3. Moni Rajendra Kumawat,
Age : 6 years, Occu. Nil
4. Sumit Rajendra Kumawat,
Age : 3 years, Occu. Nil
5. Nathu Fakira Kumawat,
Age : 68 years, Occu. Nil
6. Mathurabai Nathu Kumawat,
Age : 63 years, Occu. Household

All r/o Ghat Road, Chalisgaon,
District Jalgaon

APPELLANTS

(Appellants No. 2, 3 and 4 being
minors under the guardianship of
appellant No.1)

VERSUS

1. Vilas Dattu Fulwari,
Age : Major, Occu. Transport,
R/o Ambika Niwas, Ghat Road,
Chalisgaon, District Jalgaon

2. United India Insurance Co. Ltd.,
Kisan Kranti Building,
Market Yard, Ahmednagar, through
its Branch Manager RESPONDENTS

Mr. Uday S. Malte, Advocate for the appellants
Mr. Pradeep R. Patil, Advocate for respondent No.1
Mr. A.B. Gatne, Advocate for respondent No. 2

CORAM : M.T. JOSHI, J.

DATE OF JUDGEMENT RESERVED : 06/02/2015

DATE OF JUDGEMENT PRONOUNCED : 10/03/2015

JUDGEMENT :

1. Heard both sides.
2. The present appeal is preferred by the original applicants in a petition under section 22 of the Workmen's Compensation Act, 1923. The compensation was granted only as against the employer – the respondent No. 1 while the insurer was exonerated. Further, the rate of interest was awarded at the rate of 6% per annum on the amount

of compensation of Rs. 2,21,790/- and no penalty was imposed. Therefore, the present appeal.

3. The appellants' case, in short, before the learned Commissioner for Workmen's Compensation, was as under :-

. That deceased Rajendra Nathu Kumawat was working as a driver with respondent No. 1 on a rickshaw bearing registration No. MH-19/9417. On 9th December, 1996, near Yesgaon-Shivar, on Shirdi-Manmad road, the said rickshaw met with an accident as an unknown truck had dashed it. The deceased died in the accident. He was 28 years old and was drawing salary of Rs. 3000/- per month. Therefore, the appellants i.e. the widow of the deceased and minor children filed the application (W.C.) No. 4/1997 for grant of compensation against the respondent No. 1 - the owner and respondent No. 2-

the insurer of the rickshaw.

4. The respondent No. 1 did not contest the application. The respondent No. 2 – the insurer denied all the adverse allegations. It submitted that there was breach of terms and conditions of the policy of insurance and therefore, it was not liable to pay any compensation.

5. The learned Commissioner for Workmen's Compensation came to the conclusion that though the rickshaw had a permit to ply within the territorial limits of District Jalgaon, since it was being driven beyond the said limits, it would amount to breach of the condition of the permit and therefore, the compensation was directed to be paid only by the respondent No. 1 with interest, as detailed supra.

6. Mr. U.S. Malte, learned counsel for the appellants, submitted that merely having no permit to ply the rickshaw beyond the limits of a district would not amount to substantive breach of the terms and conditions of the policy of insurance. Further the rate of interest awarded by the learned Commissioner is highly meager and no penalty was imposed.

7. Mr. A.B. Gatne, learned counsel for respondent No. 2 – the insurer submits that as the rickshaw was being driven beyond the permitted limits, there was breach of terms and conditions of the policy of insurance.

8. On the basis of above material on record and the submissions advanced on behalf of both sides, the following substantial questions of law arise for my determination :-

(I) Whether the respondent No. 2 is liable to indemnify the respondent No. 1 in payment of compensation ?

(II) What should have been the rate of interest on the compensation granted and the penalty, if any?

Upon hearing both sides, in my view, my finding to the above question of law No. (I) is in the affirmative. Both the respondents are jointly and severally liable to pay the compensation to the appellants. The rate of interest on the amount of compensation ought to have been 12% per annum from the date of the order of the learned Commissioner for Workmen's Compensation and no penalty can be imposed. The appeal is, therefore, allowed partly, without any order as to costs, for the reasons to

follow :-

R E A S O N S

9. There is no denial that the rickshaw was having a permit to ply in one district while the same was being plied in another district. The question would be as to whether the same can be stated to be a breach of terms and conditions of contract of insurance completely nullifying the said contract. It is to be noted that the provisions of Workmen's Compensation Act, 1923 are made with a benevolent object to grant compensation to the workman. This Court had an occasion to deal with the same issue albeit regarding a petition under section 166 of the Motor Vehicles Act in the case of "***Oriental Insurance Co. Ltd. Vs. Vaishali w/o Subhash Maske and others***", reported in **2014 (8) LJSOFT 92**.

10. Mr. Gatne, learned counsel for respondent No2, however, submits that in the present case we are not dealing with the statutory liability of the insurer to indemnify the owner of the vehicle as per the provisions of the Motor Vehicles Act, but under the pure and simple contract of insurance between the employer and the insurer.

11. It is, however, an admitted fact that any breach of the terms and conditions of the contract would not entail into the setting the contract at naught unless specifically provided for. The contract of insurance provided that the rickshaw should be plied as per the permit. However, taking into consideration the benevolent provisions of the Workmen's Compensation Act, in my view, merely because the rickshaw was being plied beyond the territorial limits of Jalgaon district, it cannot

be called as a substantial breach of the terms and conditions of the policy of insurance.

12. As regards the rate of interest payable on the amount of compensation, section 4-A of the Workmen's Compensation Act provides the maximum interest at the rate of 12% per annum from the date of the order of the Commissioner for Workmen's Compensation till the realization of the amount. The learned Commissioner, however, in the present case, granted interest at the rate of 6% per annum without forwarding any reason as to why the lesser rate of interest is chosen.

13. As regards the penalty, in view of the contract of insurance between the respondents No. 1 and 2, the penalty can be imposed only against the employer and that too when sufficient opportunity on this count is given for defending the same. As

there is no evidence in that regard, no penalty can be directed to be paid. In the result, the following order:-

14. The appeal is partly allowed without any order as to costs. It is hereby directed that both the respondents shall jointly and severally pay the compensation of Rs. 2,21,790/- to the appellants with interest thereon at the rate of 12% per annum from the date of registration of the petition with the learned Commissioner for Workmen's Compensation till the realization of the amount.

. The present first appeal accordingly stands disposed of.

[M.T. JOSHI]
JUDGE