

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4 OF 2000

M/s National Insurance Co. Ltd.,
 having its Regd. and Head Office at
 3 Meddleton Road, Calcutta – 700 071
 Branch Office at Nanded and
 Divisional Office, Hazari Chambers,
 Station Road,
 Aurangabad 431 005 through its
 Divisional Manager & Costituted
 Attorney Mr. Nalines Kumar De

.. Appellant
 (Orig. Resp. No.2)

VERSUS

1] Hanmantha S/o Ramloo Bogulwar
 Age 35 years, Occu.: Nil R/o Degloor,
 Tq. Degloor, Dist. Nanded .. Orig. Claimant

2] Mr. Omprakash S/o Mohanlal Vyas
 Age Adult, Occu.: Business,
 R/o Old Mondha, New Bridge,
 Nanded .. Orig. Respondent no.1

.. Respondents

Mr. V.N. Upadhye, Advocate for the appellant
 Mr. A.S. Gandhi, Advocate and Mr. P.V. Mandlik, Sr. Advocate
 for the respondent no.1

None present for the respondent no.2 though served.

CORAM : M.T. JOSHI, J.

DATE : 16/02/2015

ORAL JUDGMENT :

1. Heard both sides.

2. Aggrieved by the direction to pay compensation
 of Rs.2,00,000/- with interest @ 12 % per annum and also
 to pay penalty of Rs.1,00,000/- to be confiscated to the

Government, the present appeal is preferred the insurer of the employer.

3. Respondent no.1 - Hanmantha filed application under section 4 and 4-A of the Workmen's Compensation Act for grant of compensation of Rs.2,00,000/-. He suffered an accident on 4/4/1995 while driving a goods truck of the present respondent no.2-Omprakash. According to him, he was regularly employed as driver for a salary of Rs.3100/- per month. He has suffered fracture to his tibia and fibula and according to him has become permanently disabled in carrying the work of driving the vehicle.

4. Before the learned Commissioner under the Workmen's Compensation Act, salary certificate at Exhibit 39, disability certificate at Exhibit 42 issued by the Medical Officer were pressed into service alongwith the certified copy of the documents prepared by the Police during investigation. From the side of the respondent no.1, he entered the witness box. No other witness was examined. None of the respondents examined anyone. The learned Commissioner came to the conclusion that the occupational permanent disability

would come to 100%, as the respondent would not be able to drive a vehicle. Though, the respondent no.1 claimed his salary at Rs.3,100/- per month, as the maximum salary as per section 4 explanation (2) of the Workmen's Compensation Act during the relevant period was to be deemed at the rate of Rs.2,000/- per month, the same was accepted. Thereafter, after considering the suitable component and the multiplier, compensation of Rs.2,00,000/- was awarded with interest and penalty, as detailed above.

5. During hearing, it has become an admitted fact that as the accident has occurred on 4/4/1995 and as the amended Act of 1999, raising the ceiling from Rs.1,00,000/- to Rs.2,00,000/-, has come into force with effect from 15/9/1995, the learned Commissioner ought not have granted compensation by extending the benefit of ceiling of Rs.2,00,000/- as per the amended Act.

6. Besides this, Mr. Upadhye submits that the Medical Officer, who has issued the certificate was not examined. In the circumstances, according to him, merely because there was fracture to tibia and fibula, the learned Commissioner ought not have considered that

the respondent no.1 has become permanently disabled. He further also submits that during the relevant period, there was no provision for grant of interest and the penalty is also imposed upon the present insurer.

7. On the other hand, Mr. Gandhi submits that the respondent no.1 is a poor workman. He was not able to examine the Medical Officer, however, by invoking the provisions of section 11 of the Workmen's Compensation Act, 1923, nothing had prevented the present appellant from calling upon the respondent no.1 to produce himself for the medical examination. He submits that the interest at the rate of 12% per annum granted by the learned Commissioner is proper.

8. On the basis of this material, following substantial questions of law would arise for my determination:-

I) Whether, in absence of the examination of the Medical Officer, the Commissioner could have come to the conclusion regarding the permanent disability ?

II) Whether the interest and the penalty awarded by the learned Commissioner is legal ?

My finding to point no. I is in the affirmative and to point no.II is that grant of interest is proper, however, the penalty could not have been awarded. First Appeal is therefore partly allowed for the reasons to follow.

R E A S O N S

9. By holding the maximum salary of the respondent no.1 at the rate of Rs.1,000/- per month, the compensation would come down to Rs.1,00,000/- from Rs.2,00,000/-.

10. As regards the non-examination of the Medical Officer, Mr. Upadhye relies on the ratio of "**Rajesh Kumar @ Raju V. Yudhvir Singh and anr.**" **AIR 2008 SC 2396.**

11. Reading of the said judgment would show that the application was under section 163-A and section 166 of the Motor Vehicles Act, which was considered in

reference to the provisions of the Workmen's Compensation Act. In that case, in absence of the examination of the Medical Officer, the Supreme Court held that the Medical Officer should have been examined. In the present case, had the appellant any doubt regarding the permanent disability of the respondent no.1, it could have very well invoked the provisions of section 11 of the Workmen's Compensation Act, as detailed supra. In the circumstances, the grant of compensation to the tune of Rs.1,00,000/- cannot be interferred with.

12. As regards the interest, though during the relevant period, there was no provision for providing of interest, it should be noted that the compensation of the respondent no.1 was legally held and, therefore, every Court has right to grant interest. In the circumstances, grant of interest also can not be interferred with.

13. As regards the imposition of penalty, it should be noted that the present appellant is the insurer and, therefore, the liability was of the employer. Besides this, even no separate notice was issued regarding the

same. In the circumstances, the penalty could not have been imposed. In the result, the following order:-

14. The first appeal is hereby partly allowed without any order as to costs. It is hereby directed that the present appellant and respondent no.2 shall jointly and severally pay compensation of Rs.1,00,000/- to the respondent no.1 with interest at the rate of 12% per annum from the date of occurrence of the accident i.e. 4/4/1995 till the realization of the same. The claim of the respondent no.1 as regards the penalty is hereby throughout dismissed.

15. The respondent no.1 would be at liberty to withdraw the proportionate amount in the above direction from the Office of the concerned Commissioner and the balance be refunded to the present appellant.

16. Consequently, Civil Application no.11610 of 2004 filed by the appellant/applicant, seeking to direct the Office to accept the amount by extending time, also stands disposed of.

[M.T. JOSHI]
JUDGE

arp/