IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1216 OF 2015
WITH
CIVIL APPLICATION NO.10486 OF 2014

Sharad S/o. Marotirao Kagne, **..APPELLANT**
Age-42 years, Occu- Business,
R/o. Gurukul Housing Society,
Ahmedpur, Tq. Ahmedpur,
Dist. Latur

Versus

1. Bapurao S/o. Shankarrao Kare, **..RESPONDENTS**
Age-56 years, Occu-Lbour,

2. Sow. Vandana W/o. Bapurao Kare,
Age-51 years, Occu-Household,

Both R/o. Shyadri Bhavan, Idgah Road,
New Mondha, Ahmedpur,
Tq. Ahmedpur, Dist. Latur

3. National Insurance Co. Ltd.,
Through its Branch Manager,
Hanuman Chowk, Latur

Mr.Vinayak M. Kagne, Advocate for the appellant
Mr.Satish S. Manale, Advocate for the respondent No.1
Mr.S.V.Kulkarni, Advocate for the respondent No.3

CORAM : A.M. BADAR,J.
DATED : 05.12.2015

ORAL JUDGMENT :-

1. This is an appeal under section 30 of the Employee's Compensation Act, 1923 by original respondent No.1-owner of Maruti car bearing Registration No. MH-24-C-4163, challenging the judgment and award of the learned Commissioner under the Employee's Compensation Act, Latur, rendered in W.C.A. No.88 of 2005 on 29.08.2007 between the parties. Respondent Nos. 1 & 2 herein are the original applicants/claimants. Respondent No.3 herein was respondent No.2 before the learned Commissioner under the Employee's Compensation Act, Latur. For the sake of convenience, parties shall be referred to in their original capacity.

2. Mr. Hansraj Pawar, learned Counsel waives notice for respondent Nos. 1 & 2/original claimants. Mr.S.V. Kulkarni, learned Counsel waives notice for respondent No.3/Insurance Company.

3. Admit on the following substantial question of law :-

(i) Whether only employer can be made liable to bear the liability of payment of interest on the amount of compensation payable to the legal representatives of deceased employee when liability of such deceased employee was covered by the contract of insurance?

4. Taken up for final hearing at the stage of admission itself with consent of the learned Counsels appearing for parties.

5. Brief facts leading of institution of present appeal are thus :-

. A claim for compensation on account of death of Govind Kare was lodged under Section 10 of the Employee's Compensation Act, 1923 by his parents before the Commissioner under the Employee's Compensation Act and Labour Court, Latur. It is case of the applicants that their deceased son Govind was employed as a driver on Maruti car owned by respondent No.1-Sharad Kagne on monthly salary of Rs.4000/-. According to the applicants, on 25.03.2005 when Govind was driving Maruti car, it met with an accident due to collision of another Car of Indica make having Registration No. MH-20-7-3001. Deceased Govind succumbed to fatal injuries caused to him in this accident. According to the applicants, though respondent No.1 being owner and respondent No.2 being insurer of the said car were liable to pay compensation, on their default, the claim is made before the Commissioner. Compensation of Rs.4,39,900/- was claimed with interest at the rate of 12% from the date of accident till realization of entire amount of compensation.

6. Respondent No.1/original appellant filed written statement and opposed the claim, but admitted the fact that he had engaged deceased Govind as a driver of the Maruti car. According to respondent No.1, salary of deceased Govind was only Rs.2000/- per month. Respondent No.2-insurance company opposed the claim by denying each and every adverse averments by contending that deceased Govind was not holding valid and effective license and therefore it is not liable to pay compensation.

7. After hearing the parties, the learned Commissioner came to the conclusion that deceased Govind was employed as a driver on the car owned by respondent No.1 and he died in accident arising out of and in the course of his employment. Accordingly, the learned Commissioner assessed compensation and directed respondents to pay the same jointly as well as severally to the applicants. However, the learned Commissioner observed that respondent No.2-insurance company is not statutorily liable to pay interest on compensation amount so assessed. Therefore, liability to pay interest on the amount of compensation was fastened on respondent No.1 owner/appellant. Hence, this appeal by owner challenging the judgment and award by the learned Commissioner under

the Employee's Compensation Act, whereby he is solely made liable to pay interest on the amount of compensation.

8. Heard Mr.Kagne, learned Counsel appearing for the appellant. In his submission, the policy of insurance covers the risk of driver and accordingly premium was paid by the owner of the car to the insurance company. He further argued that learned Commissioner under the Employee's Compensation act committed error in law by holding that the insurance company is not liable to pay interest on the amount of compensation when there is no evidence on record to show that the contract of insurance excludes liability of the insurer to pay interest on the amount of compensation. By relying on judgment of the Supreme Court in the matter of ***Ved Prakash Garg Vs Premi Devi and Others AIR 1997 SC 3850,*** Mr. Kagne, therefore, submits that the impugned judgment so far as it relates to fastening liability of payment of interest on the employer needs to be quashed and set aside.

9. Mr. Kulkarni, the learned Counsel appearing for insurance company justified impugned judgment and award of the learned Commissioner by contending that the insurance company had not taken liability to pay interest on the amount of compensation and as such the learned

Commissioner has rightly exonerated the insurance company from paying interest on the amount of award.

10. Perusal of impugned judgment and award dated 29.08.2007 shows that the learned Commissioner under the Employee's Compensation Act observed that insurance company is not statutorily liable to pay interest of compensation and therefore respondent No.1 being employer has to pay the same as he failed to comply provisions of section 4-A(3) of the Employee's Compensation Act, 1923. The learned Commissioner accordingly awarded interest at the rate of 12% p.a. on the amount of compensation and directed the employer/respondent No.1/present appellant to pay the same to the applicants.

11. As present appeal is restricted to the liability of payment of interest on the amount of compensation, it is not necessary to traverse on other issues particularly when the quantum of compensation is being challenged by the applicants by filing separate appeal.

12. Section 4-A of the Employee's Compensation Act, 1923 deals with payment of compensation and penalty in case of default. As per sub-section (3) of section 4-A when any employee makes default in paying compensation due under the said Act, within one month from the date it

fell due, the Commissioner can direct such employer to pay simple interest thereon at the rate of 12% p.a. or at such higher rate not exceeding maximum of lending rate of any scheduled bank. In the case in hand as the amount of compensation was not paid within prescribed period, the learned Commissioner had directed the employer/owner of the car to pay interest at the rate of 12% p.a. on the amount of compensation from the date of accident till its realization.

13. The certificate/policy schedule placed on record at page No.39 shows that legal liability under the Employee's Compensation Act, 1923 was covered so far as driver of the insured car is concerned, by charging additional premium. Thus, the risk of driver of the car was covered so far as it relates to liability of the employer/owner of the car under the provisions of the Employees Compensation Act, 1923. Perusal of certificate of insurance placed on record does not show any term or condition which deals with exclusion of liability of the insurer to pay interest or penalty on the amount of compensation payable to the legal representatives in the event of accidental death of driver/employee of the insured. In absence of any specific clause in respect of exclusion of liability in respect of payment of interest on the amount of compensation, it cannot be said that

insurer is not liable for payment of interest on amount of compensation.

14. The issue as to liability of the insurer for payment of interest is no more *res-integra*. In the matter of *Vedprakash (Supra),* following are the observations of the Supreme Court in this regard.

> "14. 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 Workmen's 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 Motor Vehicles 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 4A 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 4A 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 4A(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 bread-winner 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 follows. Even though the Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section 4A(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 dehors 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 f the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. xxxxx"

15. It is thus clear that as observed by the Supreme Court, liability to pay amount of compensation as well as interest thereon needs to be discharged by the insurer and insurance company cannot be heard to say that it is

not liable to indemnify insured, so far as liability of interest is concerned.

16. In the result, it is held that learned Commissioner under the Employee's Compensation Act, has erred in fastening liability of payment of interest on amount of compensation only on the employer/insured by exonerating insurance company. As such, appeal deserves to be allowed with following order :-

i. Appeal is allowed.

ii. Impugned judgment and award dated 29.08.2007 in W.C.A. No.88 of 2005 between the parties passed by the learned Commissioner under the Employee's Compensation Act, Latur is modified and it is directed that in addition to payment of compensation to the applicants therein, respondent Nos.1 & 2 are jointly and severally liable to pay interest at the rate of 12% p.a. on the amount of compensation determined by the learned Commissioner from the date of accident till realization of the amount of compensation. However, in the circumstances of the case, there shall be no order as to costs.

iii. Appellant is permitted to withdraw the amount, if any, deposited in this Court.

iv. Pending Civil Application, if any, stands disposed of.

[A.M. BADAR,J.]