

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

MFA.No. 115 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN WCC 82/2002 of W.C.C., KOTTAYAM DATED
14-04-2012

APPELLANT(S)/3RD OPPOSITE PARTY:

IFFCO TOKIO GENERAL INSURANCE COMPANY LIMITED,
COCHIN, NOW REPRESENTED BY ITS MANAGER-LEGAL,
'SATGAMAYA', M.G.ROAD, KOCHI-600 011.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENT(S)/APPLICANT AND OPPOSITE PARTIES 1 & 4:

1. CHACKO,
S/O.LATE PATHROSE, PALLIYADIYIL HOUSE, PUTHAMATTOM
MALIKAKADAVU.P.O., PANACHIKADU, KOTTAYAM. PIN-686 320.

2. BIJI JESUS
SAINT JEO'S CRUSHER DP, POOVANTHURUTH
KOTTAYAM. PIN-686 318.

3. SUSEELA BIJI
W/O.BIJI JESUS, IX/131-A, KATTIYAMTHURUTHU
THRIKKOTHAMANGALAM.P.O., PUTHUPPALLY
KOTTAYAM. PIN-686 315.

R2 & 3 BY ADV. SRI.TITUS MANI
R2 & 3 BY ADV. SRI.BINNY THOMAS
R1 BY ADV. SRI.C.S.MANILAL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.F.A.(WCC).No.115 of 2013

Dated this the 31st day of August, 2015

JUDGMENT

The order passed by the Court of the Commissioner for Workmen's Compensation, Kottayam in W.C.C.No.82 of 2002 is under challenge in this appeal.

2. The first respondent instituted the proceedings referred to above invoking Section 22 of the Workmen's Compensation Act. It is alleged by the first respondent that he sustained injuries in an accident took place on 14.5.2002 in the course of his employment under respondents 2 and 3. The establishment of respondents 2 and 3 was a metal crusher unit and the first respondent sustained crush injuries to his right little finger and ring finger. He claimed a

sum of Rs.50,000/- by way of compensation in the proceedings. The appellant was arrayed as a respondent in the proceedings alleging that they have issued a policy of insurance to respondents 2 and 3 to cover the risks of respondents 2 and 3 under the Workmens' Compensation Act. Respondents 2 and 3 contested the application, contending that they have no liability to pay compensation to the first respondent and that if at all it is found that they have any liability, they are liable to be indemnified by the appellant. The appellant contested the application, contending that they have not issued any policy to respondents 2 and 3 to cover the risks of respondents 2 and 3 under the Workmen's Compensation Act. According to them, they have issued only a group personal accident insurance policy to the second respondent and that therefore they are liable to pay only the amounts payable to the first respondent as per the terms of the said policy.

3. The Commissioner for Workmen's Compensation found that the first respondent was employed under respondents 2 and 3 and that he sustained personal injuries out of an accident occurred during and in the course of his employment on 14.5.2002. The Commissioner also found that the percentage of loss of earning capacity suffered by the first respondent in the accident is 11%. Thereupon, the Commissioner worked out the compensation payable to the first respondent as per the provisions of the Workmen's Compensation Act at Rs.17,446/-, reckoning his loss of earning capacity at 11% and the monthly income at Rs.2,400/- and passed the impugned order directing the appellant and respondents 2 and 3 to deposit the said amount before the Commissioner less Rs.1,000/- already paid, with interest at the rate of 12% per annum. The Commissioner also directed that if the said direction is not complied with, the said amount will be realised with 30% of

the said amount towards penalty also. The appellant is aggrieved by the said decision of the Commissioner for Workmen's Compensation.

4. Heard the learned Senior Counsel for the appellant as also the learned counsel for the respondents.

5. Ext.A2 is the insurance policy issued by the appellant to the second respondent. It is beyond dispute that Ext.A2 is not a policy covering the risks of the second respondent under the Workmens' Compensation Act. On the other hand, Ext.A2 is a group personal accident insurance policy issued by the appellant. According to the appellant, as per the terms of Ext.A2 policy, they are not liable to pay any interest or penalty to the workmen. The fact that Ext.A2 policy does not provide for payment of interest and penalty is not in dispute. The case of the first respondent is that in so far as he is entitled to recover the compensation determined as due with interest and penalty under the

Workmens' Compensation Act, the appellant is liable to pay the said amount to him. According to the appellant, unlike the provisions contained in the Motor Vehicles Act, in so far as no liability is fastened on them under the Workmens' Compensation Act, they are entitled to contract out the liability to pay interest and penalty.

6. The question whether the insurer is liable to pay interest in a case like this has been considered by the Apex Court in ***New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya and Anr.*** [2006(2) KLT 539] and it was held that the insurer can contract out the liability to pay interest in policies of this nature. Paragraphs 14 and 15 of the said judgment reads thus:

“14. By reason of the provisions of the Act, an employer is not statutorily liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer, the insurer shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor Vehicles Act does not have a

statutory liability. S.17 of the Act does not provide for any restriction in the matter of contracting out by the employer vis-a-vis the insurer.

15. The terms of a contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provisions of the Insurance Act. In terms of the provisions of the Insurance Act, an insured is bound to pay premium which is to be calculated in the manner provided for therein. With a view to minimize his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in law."

In the light of the aforesaid decision of the Apex Court, the contention raised by the learned counsel for the appellant has to be accepted.

In the result, the appeal is allowed in part and the impugned order is modified limiting the liability of the appellant to Rs.17,446/-. It is made clear that the first respondent is free to recover the interest and penalty from respondents 2 and 3 less Rs.1,000/- already paid by the

second respondent. The Commissioner for Workmen's Compensation shall release the excess amount, if any, deposited under Section 13 of the Workmen's Compensation Act to the appellant. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

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