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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 549 of 2007

The New India Assurance Company Limited through Divisional Manager The New India Assurance Company Limited Second Floor Rama Trade Center Bus Stand Road Bilaspur Chhattisgarh

---- Appellant

Versus

1. Smt. Urmila Bai Wd/o Late Ramratan Satnami @ Konda aged about 27 years
2. Ku. Maheshwari Bai D/o Late Ramratan Satnami @ Konda aged about 7 years
3. Nitish Kumar S/o Late Ramratan Satnami @ Konda aged about 4 years

Respondents No.2 & 3 minor represented through Mother Respondent No.1 i.e. Smt. Urmila Bai

Respondents No.1 to 3 resident of village Dondkibhata Presently Residing at village Bhaysgond P.S. Bilha Tehsil Bilha District Bilaspur Chhattisgarh

4. M/s Bansal Per Boiling Industries Bilha through Shri Vinod Kumar Agrawal S/o Unknown age unknown R/o Bilha Tehsil Bilha District Bilaspur Chhattisgarh

---- Respondents

For Appellant/Insurance Company	: Shri Sourabh Sharma, Advocate.
For Respondent/Claimants	: Shri Malay Bhaduri, Advocate.
For Respondent/Owner	: Shri Goutam Khetrapal, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

02/12/2016

1. This appeal by the Insurance Company has been admitted on the following substantial question of law:-

> (i) Whether the Commissioner for Workmen's Compensation, Labour Court, Bilaspur was not justified in awarding interest against the insurer in view of the Express Exclusion clause in the policy of insurance?

> (ii) Whether the Commissioner for Workmen's Compensation, Labour Court, Bilaspur was not justified in determining the daily wages of the deceased at Rs.71.42 contrary to the pleadings and evidence?

2. As far as second question is concerned, in my view, this is no question of law much less substantial question of law. It is only a pure finding of fact about the wages of the workmen.

3. As far as first question is concerned, the issue whether the Insurance Company can be held liable to pay the interest awarded by the Commissioner for the Workmen's Compensation is no longer *res integra*.

4. In *Ved Prakash Gar v. Premi Devi & Others, AIR 1999 SC 3854*, the Apex Court has laid down that the Insurance Company cannot be held liable to pay interest if there is an exclusion clause in the policy. Unlike the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act"), there is no statutory requirement to cover liability under the Workmen Compensation Act. Therefore, the liability for the workmen is strictly covered with the terms of agreement entered into between the parties.

5. In *New India Assurance Company Ltd. v. Harshadbhai Amrutbhai Modhiya & Another, 2006 ACJ 1699,* the Apex Court held as follows:-

> "11. The terms of a contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provision of the Insurance Act. In terms of the provisions of the 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 the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in law.
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> 14. As indicated hereinbefore, a contract of insurance is governed by the provisions of the Insurance Act. Unless the said contract is governed by the provisions of a stature, the

> parties are free to enter into a contract as for their own volition. The Act does not contain a provision like Section 147 of the Motor Vehicles Act. Where a statue does not provide for a compulsory insurance or the extent therefore, it will bear repetition to state, the parties are free to choose their own terms of contract. In that view of the matter, contracting out, so far as reimbursement of amount of interest is concerned, in our opinion, is not prohibited by a statue."

6. In the present case, policy condition provides that the Insurance Company shall be liable to pay all claims under the Workmen Compensation Act, 1923 (hereinafter referred to as 'W.C. Act') and as amended from time to time. However, proviso to this condition reads as follows:-

> "Provided that the insurance granted hereunder is not extended to include:
>
> (i) any interest and/or penalty imposed on the insured on account of his/their failure to comply with the requirement laid down under the W.C. Act, 1923 and
>
> (ii) any compensation payable on account of occupational disease listed in Part 'C' of Schedule III of the W.C. Act, 1923."

7. Therefore, there was stipulation in the contract of insurance that the insurer would not be liable to pay any interest or penalty on account of failure to comply with the requirement laid down under the W.C. Act. Under the W.C. Act, the liability is of the employer to pay the compensation. He may enter into contract with the Insurance Company but unlike the M.V. Act', the Insurance Company has no directly liability. It is always open to the employer to deposit the compensation even if there is a policy of insurance.

8. In view of the specific clause in the insurance policy, the Insurance Company cannot be held liable to pay interest component of the award. The liability to pay the interest component of the award is fixed upon the owner and the Insurance Company is exonerated from its liability to pay interest.

9. The law is well settled that in a claim petition under the W.C. Act even if lesser amount is claimed, the Commissioner has to assess and award the compensation as per law. Though, the claimants have not filed any appeal

under the W.C. Act, the interest is statutorily required to be 12%. Therefore, the award is modified and the compensation shall be paid with interest at the rate of 12% per annum from the date of the accident till payment of the amount.

10. The appeal is partly allowed.

Sd/-
(Deepak Gupta)
Chief Justice

Anu