

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 382 OF 1995

M/s New India Assurance Co. Ltd. .. **Appellant**
Having its Regd. & Head Office
at New India Assurance Building,
87, M.G. Road, For Mumbai 400
001, Branch office at Sangamner,
Dist. Ahmednagar and Divisional
Office at Adalat Road,
Aurangabad 431 005
Through its Divisional Manager.

VERSUS

1. Mr. Yadav Rama Gagare, Major,
Labour, r/o Mandve, Tq.
Sangamner, Dist. Ahmednagar.
2. Mr. Shivaji s/o Kisan Gunjal,
Major, Occu: business, R/o
Pravara Transport,
Sangamner, Dist. Ahmednagar.
3. Mr. Vithal s/o Keshav Kashid, ... **Respondents**
Major, Occu: Driver, Wadgaon,
Pan, Tq. Shrirampur, District:
Aahmednagar
4. Mrs. Gangubai Yadav Gajare,
Major, Occu: Household r/o
Mandve, Tq. Sangamner, Dist.
Ahmednagar.

Mr. V. N. Upadhye, Advocate for appellant
Mr. S. K. Shinde, Advocate for respondents 2 and 3,
Mr. S. L. Bhapkar, Advocate for respondents 1 and 4

CORAM : V. K. JADHAV, J.

DATE : 21st March, 2016

ORAL JUDGMENT :

1. Being aggrieved by the judgment and order dated

29.07.1995 passed by the learned Commissioner for Workmen's Compensation & Judge, 1st Labour Court, Ahmednagar, in Application (WC) No.70/1992, the Insurer/original Opponent No.3 has preferred this appeal only to the extent that learned Commissioner for Workmen's Compensation & Judge, 1st Labour Court, Ahmednagar has imposed penalty on the Insurer as provided under Section 4-A(3) of the Workmen's Compensation Act.

2. Brief facts giving rise to the present appeal are as follows:

- i. Deceased Bhaskar was in employment of respondent No.2 as a cleaner, since two years immediately preceding the incident, on truck bearing MWA 5619. Respondent No.2/original opponent No.1 was owner of the said vehicle/truck and respondent No.3/Original Opponent No.2 was driver on the said truck. On 22.04.1992, under the instructions of respondent No.2, respondent No.3 driver took the said truck in an agricultural field for loading sugarcane. Deceased Bhaskar had also accompanied the truck as a part of his duty. In the field, respondent No.3 driver instructed the deceased Bhaskar to look into machine of the truck and while doing so, right hand

of deceased Bhaskar got entangled in the belt and the belt also stuck to his chest. He had sustained sever injuries and thereafter succumbed to the same.

- ii. The claimants/respondent Nos. 1 to 4 herein, being legal representatives/dependents, approached the Commissioner for Workmen's Compensation & Judge, 1st Labour Court, Ahmednagar for grant of compensation under the relevant provisions of the Workmen's Compensation Act. The claimants also claimed compensation alongwith interest besides the penalty for not depositing the compensation amount within stipulated time. The learned Commissioner for Workmen's Compensation & Judge, 1st Labour Court, by its impugned judgment and order dated 29.07.1995, allowed the said application and thereby directed opponent No.3/Insurer to deposit Rs.67,200/- by way of compensation alongwith interest @ 6% per annum and further directed to pay Rs.7,000/- by way of penalty under section 4-A(3) of the Workmen's Compensation Act. Hence this appeal by the appellant/Insurer to the extent of imposing penalty.

3. The learned counsel for the appellant/ Insurer submits that though the appellant Insurer is liable to

meet the claim of compensation along-with interest, the appellant Insurer is not liable to pay additional amount by way of penalty imposed on it. The learned counsel submits that in the year 1995 itself, the appellant Insurer has deposited the amount of compensation alongwith interest before the Labour Court and preferred this appeal so far as imposition of penalty on the appellant Insurer is concerned. The learned counsel submits that it would be the liability of Insured/ employer alone and that appellant Insurer is not liable to pay the same.

4. The learned counsel for the appellant, in order to substantiate his submission, placed reliance on the decision of the Hon'ble Supreme Court in the case of **Ved Prakash Garg V. Premi Devi & ors.** reported in (1998)ACJ 1.

5. Learned counsel for respondent Nos. 2 and 3, Owner and Driver respectively, submits that the vehicle involved in the incident was validly insured with the appellant Insurer covering the date of accident and as the amount of compensation has not been deposited within a month from the date of accident, the appellant Insurer is liable to pay amount of penalty. The learned counsel submits that the appellant Insurer stands in the shoes of

the Insured employer and thus liable to pay the amount of compensation alongwith interest and penalty.

6. The learned counsel for respondent Nos. 2 and 3, in order to substantiate his contention, placed reliance on the decision of the Hon'ble Supreme Court in the case of **Khirod Nayak Vs. Commissioner for Workmen**, reported in **ACC 1991 2 441**.

7. I have also heard learned counsel for the respondent Nos.1 and 4/claimants.

8. In the case in hand, dependents of deceased Bhaskar approached to the Commissioner for Workmen's Compensation & Judge, Labour Court claiming compensation under the relevant provisions of the Workmen's Compensation Act, 1923 alongwith interest on the said amount besides the penalty for not depositing the amount within the stipulated time. Accordingly, the learned Commissioner for Workmen's Compensation & Judge, Labour Court has issued notice to the respondents i.e. Employer/owner, Driver and Insurer of the vehicle involved in the incident. It appears from the record that the respondents employer and driver remained absent though served with the summons of the Court. However, the appellant Insurer has appeared before the

court and contested the application on various counts including statutory defence of breach of terms and conditions of the policy. The appellant Insurer has contested the said application for compensation on the ground that the Insurance company is not liable to pay the amount of compensation on account of breach of terms of policy.

9. So far as respondent No.1 employer is concerned, he has not even denied the entitlement of claimants/dependents for the compensation. Thus, the compensation as required to be paid by the employer on account of death of the workman arising out of and in the course of employment fallen due within one month from the date of accident. The employer has not contested the application filed under the provisions of the Workmen's Compensation Act before the Commissioner for Workmen's Compensation & Judge, Labour Court. Since the appellant Insurer has raised certain grounds, including the ground of breach of terms and conditions of policy, it can be said that the amount of compensation under the Workmen's Compensation Act fallen due only after adjudication of the matter by the Commissioner for Workmen's Compensation & Judge, Labour Court.

10. In case of **Ved Praksh Garg** (supra) relied on by the learned counsel for the appellant, the Hon'ble Supreme Court has observed that the Insurance company will have to make good the claim of interest. In view of conjoint operation of section 4A, sub section 3 additional amount of compensation by way of penalty is required to be paid by the insured employer. It is further observed by the Hon'ble Supreme Court that the Insurer would not remain liable to reimburse the said claim and it would be liability of Insured employer alone.

11. Section 4A of the Workmen's Compensation Act does not contain any provision when employer denies liability of compensation in toto. If liability is denied by the employer, then the liability to pay compensation falls due after adjudication of the matter by the Labour Court or by the Commissioner for Workmen's Compensation as the case may be. However, if the liability is not denied, then there is no justification in delaying the payment of compensation and thus, the employer is liable to pay penalty within the meaning of section 4-A(3) of the Workmen's Compensation Act. In view of this, the appeal is required to be partly allowed by setting aside the order passed by the Commissioner for

Workmen's Compensation and Judge, 1st Labour Court, Ahmednagar to the extent of directing the appellant Insurer to pay penalty as provided under section 4-A(3) of the Workmen's compensation Act. Accordingly, I proceed to pass following order:

O R D E R

- i. The first appeal is hereby partly allowed.
- ii. Judgment and order dated 29.07.1995 passed by the Commissioner for Workmen's Compensation and Judge, 1st Labour Court, Ahmednagar in Application (WC) No.70 of 1992 is hereby quashed and set aside to the extent of directing the appellant Insurer to pay Rs.7000/- by way of penalty under section 4-A(3) of the Workmen's Compensation Act.
- iii. Original Opponent No.1 Employer Shivaji Kisan Gunjal shall pay Rs.7000/- by way of penalty under section 4-A(3) of the Workmen's Compensation Act.
- iv. Rest of the judgment and order passed by the learned the Commissioner for Workmen's Compensation and Judge, 1st Labour Court, Ahmednagar in Application (WC) No.70 of 1992 dated 29.07.1995 directing Opponent No.3/ Insurance company to

deposit an amount of Rs.67,200/- by way of compensation alongwith interest @ 6% per annum from 01.06.1992 till the date of that order is confirmed.

v. First appeal is accordingly disposed of.

vi. In the circumstances there shall be no order as to costs.

(V. K. JADHAV, J.)

JPC