

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 202 OF 2016

National Insurance Company Ltd., G.E. Road, Raipur, Tahsil & District- Raipur, through Divisional Manager

... Appellant

Versus

1. Sahdev Nirmalkar, S/o Late Ghasiya Ram, R/o Village- Nilja, Post- Saragaon, Tahsil- Dharsiva, District Raipur (C.G.)
2. Mukesh Kumar, S/o Shantilal Chawda, R/o Main Road Saragaon, Tahsil & District- Raipur (C.G.)
3. Manager, Magma Leasing Insurance and Finance Co. Ltd., Branch No.15, Gate No.4, 6th Floor, Poddar Fort, 18 Ravindra Sarni Kolkata, present office in front of Raj Kumar College, G.E. Road, Raipur (C.G.)

... Respondents

and

MISC. APPEAL (C) NO. 1637 OF 2016

Sahdev Nirmalkar, aged about 36 years, S/o Late Ghasiyaram, R/o Village- Nilja, Post- Saragaon, Tahsil- Dharsiva, District Raipur (C.G.)

... Appellant

Versus

1. Mukesh Kumar, S/o Shantilal Chawda, R/o Main Road Saragaon, Tahsil & District- Raipur (C.G.)
2. National Insurance Company Limited, through Divisional Manager, G.E. Road, Raipur, Tahsil & District- Raipur (C.G.)
3. Manager, Magma Leasing Insurance and Finance Co. Ltd., Division No.15, Gate No.4, 6th Floor, Poddar Fort, 18 Ravindra Sarni Kolkata, local office - in front of Raj Kumar College, G.E. Road, Raipur (C.G.)

... Respondents

Mr. Raj Awasthi, Advocate, for the Appellant and for Respondent No.2- Insurance Company respectively in M.A.(C) No. 202 of 2016 and M.A.(C) No. 1637 of 2016.

Mr. Malay Kumar Bhaduri, Advocate, for the Appellant and for Respondent No.1 respectively in M.A.(C) No. 1637 of 2016 and M.A.(C) No. 202 of 2016.

Mr. A.L. Singroul, Advocate, for Respondent No.2 and for Respondent No.1 respectively in M.A.(C) No. 202 of 2016 and M.A.(C) No. 1637 of 2016.

Mr. Rohitasva Singh, Advocate, for Respondent No.3-Insurance Company in both the M.A.(C).

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/07/2017

1. I.A. No. 1 of 2016 has been filed by the Appellant in M.A.(C) No. 1637 of 2016, for condoning the delay of 307 days occurred in the filing of the appeal.
2. Considering the total facts and circumstances, I.A. No. 1 of 2016 is allowed and the delay of 307 days occurred in the filing of M.A.(C) No. 1637 of 2016 is condoned.
3. With the consent of learned Counsel for the parties, heard both these appeals finally at the motion stage itself and are being disposed of by this common order as these appeals arise out of the same impugned judgment.
4. The present two appeals have been filed respectively by the contesting Insurance Company and by the claimant challenging the judgment dated 27.11.2015 passed by the Commissioner for Employees Compensation-cum-Labour Court, Raipur, in Case No. 57/W.C.Act/ 2012/ Non Fatal. Vide the said judgment, the Court below has allowed the claim of Sahdev Nirmalkar and directed the contesting Insurance Company i.e., National Insurance Company Limited, to pay the compensation of Rs. 1,40,141/- to the claimant within a period of two months from the date of judgement.
5. Contention of Shri Raj Awasthi, learned Counsel appearing for the contesting Insurance Company, i.e., National Insurance Company Limited, is that it would not be liable to pay the compensation to the claimant, Sahdev Nirmalkar, as the owner of the offending vehicle has not paid the premium covering the claimant who was admittedly working as a conductor. According to him, the policy which the owner had taken the coverage is of one employee and six passengers in the vehicle. According to him, this one employee has to be inferred to be the driver of the vehicle

and therefore the impugned judgment is bad to that extent. He further submits that in this regard the Insurance Company has also led the evidence of one Madhusudan Kesharwani, an officer of the Insurance Company.

6. Per contra, Shri Malay Kumar Bhaduri, learned Counsel appearing for the claimant, Sahdev Nirmalkar, submits that the said argument of the Insurance Company is not sustainable, for the reason that the policy itself does not clarify whether the premium has been paid for the driver or for the conductor and that all that it depicts is the liability of the Insurance Company for one of the employees, therefore the finding of the Court below does not warrant interference. He further submits that the Court below has committed an error of law in not granting interest on the awarded amount from the date of the filing of the claim application, moreover as the matter was pending consideration before the Court below for a considerable period of time.

7. Having considered the rival contentions put forth on behalf of either side and on perusal of the records, particularly the document Exhibit P-1, it clearly reflects that the liability of the Insurance Company was in respect of one employee and that it is not the case of Insurance Company that there were more than one employees who had sought for claim from the Insurance Company and therefore the appeal so far as the Insurance Company is concerned challenging the liability part does not have any substance and the appeal of the Insurance Company thus deserves to be and is accordingly dismissed.

8. However, as regards the appeal of the claimant so far as the payment of interest is concerned, true it is that the incident in the instant case took place on 5.1.2007 and the claim application was filed promptly before the Court below in the same year i.e. on 2.11.2007 when the Court

below had registered the same as Case No. 57/W.C.Act/2012/Non Fatal. The impugned judgment in the instant case has been passed in the year 2015. Section 4A of the Employee's Compensation Act clearly stipulates that in the event of non-payment of compensation by the employer within the stipulated time the said amount shall carry interest thereon. For ready reference, sub Section (3) of Section 4A of the Employee's Compensation Act is reproduced below:

“4A. Compensation to be paid when due and penalty for default.–

(1) xxxx xxxx

(2) xxxx xxxx

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall–

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) xxxx xxx”

9. In view of the above, the impugned judgment passed by the Court below to the extent of non-granting of interest is not proper and the same deserves to be and is thus ordered to be modified to the aforesaid extent.

10. In the result, M.A.(C) No. No. 1637 of 2016 filed by the claimant is allowed. The impugned judgement stands modified to the extent that the amount awarded shall also carry interest at the rate of 9% per annum from the date the claim application was filed before the Court below till its realization. M.A.(C) No. 202 of 2016 of the Insurance Company stands dismissed.

Sd/-
(P. Sam Koshy)
Judge