IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 995 OF 2002
IN
REJECTED CASE NO. 893 OF 2003
WITH
CIVIL APPLICATION NO. 996 OF 2002
IN
REJECTED CASE NO. 893 OF 2003
WITH
CIVIL APPLICATION NO. 3706 OF 2002
IN
REJECTED CASE NO. 893 OF 2003
(FIRST APPEAL (STAMP) NO. 5943 OF 2002)

M/s. Laxmi Travels & Anr. .. Applicants / Appellants
vs.
The Divisional Manager, Oriental Insurance Co. Ltd. & Ors. .. Respondents

Mr. K. S. Bapat for Applicants / Appellants.
Ms Divya Menon i/b. Mr. A. S. Vidyarthi for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 14 FEBRUARY 2017

<u>P.C</u> :

1] On 31 January 2017, this court made the following order :

"1. Necessary affidavit of service has already been filed by the applicant in compliance with the directions containing in the order dated 16 January 2017 the applicant has deposited the interest component which according to they comes to Rs.2,02,208.37/- in the Registry. For the reason set out in Civil Application No.3369 of 2004, the order dismissing the Civil Application No.995 of 2002 seeking condonation of delay of one year and 98 days in the institution of the appeal is hereby restored. The Civil

Application No.3369 of 2004 is accordingly disposed of.

2. The Civil Application no.995 of 2002 to be placed for consideration on 14 February 2017 on Supplementary Board. In the meanwhile, the applicants as well as respondent Insurance Company to make statement with regard to the deposit/payment of the awarded amount to the claimants.

3. Parties are put to notice that in case delay is condoned on the said date, this Court would proceed to take up the appeal itself for final disposal, taking into consideration the short controversy involved. The parties can circulate decisions which they seek to rely upon before the said date."

2] Mr. Bapat, learned counsel for the applicants / appellants submits that in this case there is sufficient cause shown for condonation of delay. On perusal of the civil application, it does appear that sufficient cause has been shown. None of the respondents have filed any reply to oppose the application seeking condonation of delay. Accordingly, the delay is condoned and as directed in the order dated 31 January 2017, the appeal is taken up for final disposal with the consent and at the request of the learned counsel for the parties.

3] Mr. Bapat states that respondent nos. 2, 3 and 4 who are the original claimants have been duly served. However, they are not present or represented today. For the order, which is proposed to be made, the appeal can proceed in their absence.

4] The short point raised in this appeal by Mr. Bapat is that the insurance company i.e. respondent no. 1 to this appeal was undoubtedly exonerated in the matter of payment of interest. He submits that in this case there was no clause in the insurance policy which specifically excluded the liability for payment of interest. That apart, he submits that the accident in this case, was on account of use of motor vehicle. Therefore, he submits that provisions of section 147 of the Motor Vehicles Act 1988 would be applicable. Relying upon the decisions in the case of ***Ved Prakash Garg vs. Premi Devi & Ors.***[1], ***Kamla Chaturvedi vs. National Insurance Company and ors.***[2], ***National Insurance Co. Ltd. vs. Mastan and anr.***[3]***,*** and ***New India Assurance Co.Ltd. vs. Harshadbhai Amrutbhai Modhiya and anr***.[4], Mr.Bapat submits that the insurance company in the present case, must be held liable even for payment of interest.

5] Mr. Vidyarathi and Ms Divya Menon, learned counsel appearing for the insurance company however submit that in this

1 (1997) 8 SCC 1
2 (2009) 1 SCC 487
3 (2006) 2 SCC 641
4 (2006) 5 SCC 192

case, since the claimants chose to opt for applying for compensation under the provisions of the Employees Compensation Act, 1923, the claimants, cannot fall back upon the provisions of the Motor Vehicles Act 1988. That apart, they submit that the issue is to be determined in terms of the clauses in the insurance policy. They relied upon the decision of the Hon'ble Apex Court in the case of ***P.J. Narayan vs. Union of India and ors.***[5], in which, it has been held that the clauses in the insurance policy which excludes liability for payment of interest is legal and valid, when it comes to payment of compensation under the Employees Compensation Act, 1923. For this reason, they submit that there is no infirmity in the impugned judgment and award.

6] In this case, admittedly, the accident, which laid to the claim was on account of the motor vehicle. Further, in this case, there is nothing on record to show that the insurance policy had specifically excluded liability to bear the interest component. In *P. J. Narayan* (supra), the challenge was to the clause in the insurance policy, which had specifically provided that in case of compensation under the Workmen Compensation Act, 1923, the insurance company will not be liable to pay interest. Since, it is not shown that there was such a clause in the insurance policy with which we are concerned, the decision in *P. J. Narayan* (supra) will not apply.

5 (2006) 5 SCC 200 = 2004 ACJ 452

7] In case of *Harshadbhai* (supra), there was a specific clause in the insurance policy, making it clear that the insurance granted is not extended to include any interest and/or penalty imposed on the insurer on action of his or her failure to comply with the requirements laid down under the Workmen's Compensation Act, 1923. In paragraph 19, the Hon'ble Apex Court, made a distinction in case of an accident under the Motor Vehicles Act and pointed out that under the Workmen's Compensation Act, there is no provision like section 147 of the Motor Vehicles Act.

8] The facts in the present case, will be governed by the decisions in the case of *Ved Prakash Garg* (supra) and *Kamla Chaturvedi* (supra). Accordingly, there was no justification to exclude the liability of the insurance company in the matter of payment of the interest component. The impugned award is therefore modified. The insurance company is also held liable for payment of the interest component to the claimants.

9] The appellants have already deposited the interest component payable to the claimants in this court. The respondents claimants shall be entitled to withdraw the same unconditionally. Further, the appellants, without insisting on having to file any further proceedings, shall be entitled to recover this amount of Rs.2,02,208.37 paise from the respondent no. 1 insurance company since, now it is held that it is the insurance company which was liable to pay this amount to the respondents claimants. The insurance company is directed to pay such amount to the appellants within a period of three months from today. In case the amount is not paid within a period of three months then the same shall carry on interest at the rate of 7% per annum.

10] The appeal is therefore allowed. There shall however be no order as to costs. Civil applications do not survive and are disposed of accordingly.

11] The registry is directed to give intimation to respondent nos. 2 to 4 (original claimants) about making of this order, so that, the claimants can withdraw the amount as aforesaid. Such intimation to be given within a period of four weeks from today.

(M. S. SONAK, J.)

Chandka