IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 03-11-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.219 OF 2012

1.S.Jesu Mary
2.S.Jesuraj ... Appellants

-vs-

1.M/s.Subaya Constructions Co.Ltd,
Chennai -83

2.TWAD Board, Madurai &
M/s.Subaya Constructions Co.Ltd.,
No.21, Soundarapandi Street,
Ashok Nagar,
Chennai-600 083.

3.National Insurance Co.Ltd.,
No.661, Trunk Road,
Poonamallee,
Chennai-600 056. ... Respondents

Appeal against the order, dated 05.07.2011, passed in W.C.No.79 of 2009 on the file of Deputy Commissioner for Labour-I- cum- Commissioner for Workmen's Compensation-I, Chennai.

For appellants : Mr.A.Shanmugaraj
For respondent 1 : Mr.B.Natarajan
For respondent 2 : Mr.R.Ganesh Babu
For respondent 3 : Mr.D.Bhaskaran

JUDGMENT

Claimants are the appellants before this Court. Legal heirs of the deceased employee filed a claim petition before the authority for workmen's compensation on 30.03.2009 for the accident, which took place on 18.08.2007. The deceased employee was working under the first respondent on the date of accident. The third respondent insurance company has issued a policy, covering the liability of the first respondent. The authority has found that the relationship of employer and employee between the deceased and the first respondent has been proved and, in view of the Insurance Policy Ex.A-3, the third respondent insurance company is liable to pay compensation and finally awarded the compensation of Rs.4,10,200/- in favour of the claimants. The authority has further directed the third respondent insurance company to deposit the amount within 30 days from the date of receipt of a copy of the order and failing which the claimants are entitled to interest at 12% per annum. Challenging the award in respect of not awarding interest from the date of the accident, this appeal is filed by the claimants.

2. According to the appellants, as per Section 4-A of the Workmen's Compensation Act, in short, "the Act", they are entitled to interest from 31st day of the accident at the rate of 12% per annum. This issue is well settled by the Hon'ble Supreme Court in Pratap Narain Singh Deo v. Shrinivas Sabata and another, 1976 (1) SCC 289, which is subsequently followed by a Division Bench of this Court in a batch of cases in C.M.A.No.823 of 2001 (N.Ganesan v. Thilagavathi and another) reported in 2010 (2) TN MAC 80 (DB).

3. Mr.D.Bhaskaran, learned counsel appearing for the third respondent, would vehemently contend that the third respondent is not liable to pay interest, as a duty is cast upon the employer under Section 3 of the Act, and, in the event the employer fails to deposit the compensation in accordance with the statutory requirement, for the default committed by the employer, the insurance company need not pay interest. According to him, the liability of paying compensation is restricted only to the principal amount and not to the interest. He would also contend that had the employer deposited the principal amount in accordance with law, the insurer is liable to pay interest and the employer is entitled to get reimbursement. Further, the learned counsel would submit that while the employer commits default, he is not entitled to get coverage in respect of interest and the insurance company is not liable to pay any interest for the default of the employer. Ultimately, he would contend that in so far as the insurance coverage is concerned, it shall be deemed that it does not cover interest, when the employer defaults to deposit the amount, before contesting the claim. In support of his claim, the learned counsel relied upon a decision of the Supreme Court in New India Assurance Co.Ltd. v. Harshadbhai Amrutbhai Modhiya and Another, 2006 (5) SCC 192. According to him, the Hon'ble Supreme Court has distinguished the payment of compensation in respect of vehicular accident and the insurance coverage under the Act. Under Section 147 of the Motor Vehicles Act, it is the statutory liability to pay compensation on the part of the insurer, whereas, in other contracts, it is entered upon on the volition of the parties and as far as the reimbursement of the amount is concerned, it is

not prohibited by a statute, and the insurer and the insured can contract out in respect of certain terms, such as interest. The statute does not compel the insurer to pay interest or reimbursement on any other head, unless it is contracted. The insurer has a right to introduce an exclusion clause in the contract of insurance concerning liability for interest and penalty imposed on the insured. On account of employer's failure to comply with the requirements of the Act, in the event there is an exclusion clause, the insurer cannot be made liable to the insured for those amounts. The learned counsel would also rely upon another decision of the Supreme Court in P.J.Narayan v. Union of India, 2006 (5) SCC 200, wherein, it is clearly held that it is always open to the insurance company to refuse to insure and, similarly, they are entitled to provide by contract that they will not take on liability for interest. In the absence of any statute to that effect, insurance companies cannot be forced by Courts to take on liabilities, which they do not want to take on. On this count, the claim of the insured was dismissed in favour of the insurance company. Therefore, the learned counsel would contend that the employer has not come out with a clear statement that the insurance policy covers payment of interest also and he was deprived of contending that he is liable to pay interest, as there was no issue raised before the authority. Since the claim of interest is raised here, he has every right to question whether he is liable to pay interest or not and also the issue of payment of interest to pay interest on the part of the employer for the default committed by him, in complying with the requirements of the Act.

4. I have considered the rival contentions.

5. It is well settled by a Larger Bench of the Hon'ble Supreme Court, that as per Section 4-A, payment of interest is a statutory obligation and the claimant is entitled to receive interest from 31st day of the accident. In so far as the amount of compensation is concerned, the Hon'ble Supreme Court, in L.R.Ferror Alloys Ltd. v. Mahavir Mahto and Another, 2001 ACJ 645, has clearly held that liability to pay interest is part and parcel of legal liability to pay compensation upon default of payment within one month.

6. In the instant case, Section 4-A of the Act mandates that payment of interest falls due from 31st day of the accident at the rate of 12% per annum. Therefore, a duty is cast upon the insurance company to show that there is an exclusion clause in the terms of contract between them and the insured. In the absence of any exclusion clause, it shall be deemed that the insurance company is liable to pay compensation, which includes interest also. The interest part of the compensation cannot be segregated and it cannot be contended that they are liable to pay only principal and not interest.

7. As far as this appeal is concerned, it is preferred by the claimants and not the insurance company or the employer.

Payment of interest is a dispute between the insurer and the insured. They have to work out their remedy in the manner known to law. The issue herein is within a narrow sphere of Section 4-A of the Act i.e., whether the claim is entitled to interest at the rate of 12% per annum from the date it falls due or not. Therefore, I restrict my finding that the claim is entitled for interest as per Section 4-A of the Act and, as awarded by the authority, it shall be paid by the insurance company. Accordingly, the third respondent insurance company is directed to deposit the amount within a period of four weeks from the date of receipt of a copy of this order.

8. Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

dixit

To

1.The Deputy Commissioner for Labour-I-cum-
Commissioner for Workmen's Compensation-I,
Chennai.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.78427
+1cc to Mr.B.Natarajan, Advocate SR.No.78100
+1cc to Mr.R.Ganesh Babu, Advocate SR.No.78091
+1cc to Mr.A.Shanmugaraj, Advocate SR.No.78347

C.M.A.No.219 OF 2012

KJI(CO)
GN(10/01/2018)