IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1384 of 2005 (O&M)
Decided on : 10.05.2017

National Insurance Company Limited

... Appellant

Versus

Amarjit Kaur and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Neeraj Khanna, Advocate for the appellant.

Mr. G.P. Vashisht, Advocate for the respondents.

G.S. Sandhawalia, J.

CM-24602-CII-2015

The present application has been filed for fixing a actual date of hearing in the present appeal.

With the consent of the counsel for the parties, the main appeal is taken on board today itself.

The application stands allowed.

Main case

The present appeal has been filed by the Insurance Company is directed against the order dated 30.11.2004 passed by the Commissioner, Circle No.4, Ludhiana. The substantial question of law, which has been framed by the appellants is that in view of the judgment of the Apex Court in ***'P.J Narayan Vs. Union of India and others' 2004 (1) PLR 3***, the company was not liable to pay the amount of interest.

A perusal of the record would go on to show that on account of the death of Saudagar Singh who was working as a driver with respondent

No.7-Bhupinder Singh, the claim was preferred on account of the fact that the employee-Saudagar Singh had died arising out of and during the course of his employment on 13.12.1998. The claimant-respondent No.1 being widow had appeared in the witness-box to depose regarding the said fact and was supported by none other than Shamsher Singh who was *Khalasi* in the truck which met with an accident near Champark and he had got the case registered. The amount of ₹2,52,075/- was assessed as compensation by treating the monthly wages @ ₹2,500/- and applying the relevant factor of 201.66, on account of the fact that employee was of 33 years old at the time of accident. The interest element of 12% from the date of the accident was also fixed upon the appellant-company, keeping in view the fact that the insurance policy Ex.R-1 was in force. Reliance was placed upon judgment of the Bombay High Court in ***'Pardeep Surajbhan Agrawal Vs. Shri Bapu Krishna Yedava and others' 2005 (104) FLR 156***

It was in such circumstances, the appeal has been admitted vide order dated 10.03.2005 on this question of law whether the liability to pay the interest was of the insurance company. The judgment relied upon by the counsel for appellant in the case of ***P.J Narayan (supra)*** would not be applicable in the facts and circumstances of the present case, since the Apex Court has held that the insurance is a matter of contract between the insurance company and the employer and it is open to the insurance company to refuse to insure or be not liable to pay the interest.

In ***'New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya' 2006 (2) PLR 727,*** it has been held that the insurance company has a right to contract out and it was only in such circumstances the benefit can be granted and in the absence of the same, the insurance company cannot argue to the contrary.

Nothing could not be pointed out by the counsel for the appellant to show that in the insurance policy there was a exclusion clause which would absolve the company of its responsibility to pay the interest.

The law stands settled by the Apex Court in ***Pratap Narain Singh Deo Vs. Srinivas Sabata (1976) 1 SCC 289***, ***Ved Prakash Vs. Premi Devi (1997) 8 SCC 1***, ***Oriental Insurance Company Ltd. Vs. Siby George (2012) 12 SCC 540***, ***Saberbibi Yakubhai Shaikh Vs. National Insurance Co. Ltd. (2014) 2 SCC 298*** and in ***Jaya Biswal Vs. Branch Manager, IFFCO Tokio General Insurance Company Ltd. & another 2016 (11) SCC 201*** that the liability to pay interest is of the insurance company.

It is pertinent to notice that in the case of ***Siby George (supra)***, the Apex Court has specifically held as under:-

> *"12. In light of the decisions in* ***Pratap Narain Singh Deo 1976 ACJ 141 (SC) and Valsala K. 2000 ACJ 5 (SC)****, it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in* ***Mubasir Ahmed 2007 ACJ 845 (SC) and Mohd. Nasir 2009 ACJ 2742 (SC)*** *insofar as they took a contrary*

> *view to the earlier decisions in* ***Pratap Narain Singh Deo and Valsala K.*** *do not express the correct view and do not make binding precedents."*

Resultantly, keeping in view the above, the substantial question of law is decided against the appellant-insurance company and the appeal is, accordingly, dismissed. The amount of interest element which was stayed vide order dated 10.03.2005 will be released to the claimants alongwith 12% interest from the date of entitlement, as they have been deprived of the said benefit for more than a decade.

(G.S. SANDHAWALIA)
JUDGE

MAY 10, 2017
Naveen

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*