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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 303 of 2013

- Branch Manager, The New India Assurance Company Ltd., In front of Rajiv Plaza, Bus Stand Chowk, Bilaspur (C.G.)

---- Appellant/Insurer/Non-applicant No.2

Versus

1. Kunwar Singh Dhruw, S/o Late Shri Mujiram Singh Dhruw, Aged about 40 years
2. Ku. Anisha Singh Dhruw, S/o Kunwar Singh Dhruw, Aged about 3 years
3. Ku. Lalita Singh Dhruw, S/o Kunwar Singh Dhruw, Aged about 1 ½ years

   Claimant No.1 is husband, Claimants No.2 & 3 are daughters of deceased through natural guardian father Respondent No.1

   All are R/o Village Nagchuaa Chowki – Juna Para, P.S. - Takhatpur, Tahsil & District Bilaspur (C.G.)

   (Claimants)

4. Director Ankit Industries, In front of Bharat Dharam Khanta, Mungeli Road, Sakri, Bilaspur (C.G.)

   (Insured/Non-applicant No.1)

---- Respondents

For Appellant/non-applicant No.2/ Insurance Company	:	Shri Raj Awasthi, Advocate
For Respondents No. 1 to 3/ Claimants	:	Shri Rishi Rahul Soni, Advocate
For Respondent No. 4/ Non-applicant No. 1	:	Shri S.P. Kale and Shri K.P.S. Gandhi, Advocates

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

26.04.2019

1. This appeal is filed by the Appellant/insurer, who is aggrieved by the judgment dated 10.12.2012 passed by the Court of Commissioner, Workmen's Compensation, Act-cum-Labour Court, Bilaspur (hereinafter referred to as "the lower Court") in Case No 96/WCA/COC.1.B/10(F) Claim thereby awarding a sum of Rs.3,89,963/- as compensation for the death of Rekha Bai @ Santoshi with interest @ 8% per annum from the date of accident by directing the Insurance Company/non-applicant No.2 to pay the said amount within 30 days with the condition that in default of deposit of such amount within said period, penalty of Rs.1,00,000/- shall be imposed upon non-applicant No.2.

2. Instant appeal was admitted for hearing on 18.06.2013 on the following substantial question of law:

> *"Whether the Commissioner for Workmen's Compensation, Labour Court, Bilaspur, has legally erred in awarding penalty amount against the Appellant/Insurance Company?"*

3. As per claim petition filed by the Claimants who are husband and daughters of deceased Rekha Bai @ Santoshi, the deceased was under the employment of non-applicant No.1/Respondent No.4 as Labour in its Ankit Industries, Dal Mill situated in Village Sakri and was earning Rs.125/- per day. On 27.04.2010 as per instruction of non-applicant No.1, the deceased was putting pulse (Dal) in Dal Machine, at that time, her *saree* came into the contact of belt (*patta*) of the said machine and got stuck in the machine. As a result thereof, deceased Rekha Bai died on spot itself.

4. Non-applicant No.1/employer had informed the Insurance Company/non-applicant No.2 about the death of Rekha Bai in its Dal Mill vide Ex.-D/2 and insurance policy which was taken by non-applicant No.1 under the Workmen's Compensation (General) from non-applicant 2 was valid on the date of accident.

5. Learned counsel for the Appellant/Insurance Company raises only one ground that there is no any provisions under the Workmen's Compensation Act, 1923 that if the amount of compensation is not deposited within the stipulated period, the penalty can be imposed upon the Insurance Company. He submits that in the present case, the learned Commissioner has awarded compensation to the tune of Rs.3,89,963/- with interest @ 8% per annum from the date of accident by directing the Insurance Company/non-applicant No.2 to pay the said amount within 30 days with the condition that in default of deposit of such amount within said period, penalty of Rs.1,00,000/- shall be imposed upon non-applicant No.2. Therefore, the Commissioner was not justified in imposing the said penalty against the Insurance Company which deserves to be set aside by this Court.

6. Learned counsel for the Claimants/Respondents 1 to 3 supports the impugned judgment and submits that after awarding compensation by the lower Court, the amount of compensation was not deposited. He further submits that as per Ex.-P/1, insurance policy of the Dal Mill, taken by non-applicant No.1, which covers the risk of mistri, helper and labour, the lower Court has rightly fastened liability upon the Insurance Company/non-applicant No.2.

7. Learned counsel for Respondent No.4/non-applicant No.1 supports the impugned judgment and submits that as per written statement of non-applicant No.1, about the accident occurred on 27.04.2010, it was informed by non-applicant No.1 to the Insurance Company/non-applicant No.2 vide Ex.-D/2. The judgment impugned is strictly in accordance with law, warranting no interference by this Court.

8. I have considered the argument advanced by the learned counsel for the parties. Section 4A of the Act, 1923 reads as under:

> "**4A. Compensation to be paid when due and penalty for default.** –
>
> (1) Compensation under Section 4 shall be paid as soon as it falls due.
>
> (2) In case where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.
>
> (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 Gazettee, on the amount due; and
> >
> > (b) if, in his opinion, there is no justification for the delay, direct

> that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by was of penalty:
>
> Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.
>
> *Explanation.* – For the purposes of this sub-section “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).
>
> (3A) The interest and the penalty payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be.”

A reading of the above provision clearly goes to show that liability for payment of compensation under sub-section (2) and in default to pay interest and penalty under sub-section (3) is a statutory liability and rests solely on the employer. So far as the liability of the Insurance Company is concerned, it arises out of a contract of insurance entered into between the employer and the insurer. The employer is not statutory required to enter into a contract of insurance. A contract of insurance covered by the provisions of Insurance Act would depend upon volition of the parties. In the present case, the policy placed on record by the employer clearly goes to show that under the contract between the employer and the Insurance Company, the insurer had clearly excluded the liability to pay interest and penalty under the Act, 1923.

9. In the present case, the Commissioner has passed an order that if the compensation awarded in favour of the Claimants along with interest is not deposited within a period of 30 days from the date of accident, the penalty of Rs.1,00,000/- shall be payable by the non-applicant No.2. There is no any provisions that if the amount of compensation is not deposited within stipulated period, then penalty shall be imposed on the Insurance Company under the Workmen's Compensation Act. Ex.-D/1, insurance policy, was placed before the Commissioner and proved by the non-applicant No.1. As per Ex.-D/2, information of accident occurred in the Dal Mill was given by non-applicant No.1 to non-applicant No.2/Insurance Company and the lower Court against Issue No. 5 recorded a finding that if the amount of compensation with interest is not deposited within a period of 30, the liability of payment of penalty of Rs.1,00,000/- shall be upon non-applicant No. 2. Therefore, looking to the Ex.-D/1, insurance policy, there is no any contract between the employer/non-applicant No.1 and the Insurance Company/non-applicant No.2 regarding penalty and as such, the finding of the Commissioner regarding imposition of penalty on the Insurance Company is not sustainable in law.

10. In ***Ved Prakash Garg*** Vs. ***Premi Devi and others, (1997) 8 SCC 1***, the Hon'ble Supreme Court held that the insurance company will not be liable to reimburse the additional amount of compensation by way of penalty imposed by the Commissioner on the insured employer under Section 4-A (3) (b) of the Workmen's Compensation Act.

11. It is thus clear that the policy (Ex.-D/1) issued by the Insurance Company is a Workmens Compensation (General) policy of insurance which covers risk of employees, i.e. Mistri, Helper & Labour, with wages less than Rs.4,000/- due to accident arising out of and in the course of her employment with the insured. Therefore, even though if in the process of putting Dal in machine, *saree* of the deceased/workman got stuck in the machine which resulted in her death, it would make not difference because the deceased died due to accident arising out of and in the course of her employment with the insured and in this view of the matter, there is no room for any doubt that the insurance company is, under the contract with the employer, liable to indemnify the employer for any compensation payable by the employer under the Act, 1923. In this view of the matter, the finding recorded by the Commissioner that the insurance company is liable to pay compensation of Rs.3,89,963/- with interest @ 8% per annum from the date of accident till realization, is just and proper. But, the Commissioner was not justified in imposing the penalty of Rs.1,00,000/-, in default of deposit of such amount of compensation of Rs.3,89,963/- within 30 days.

12. In view of the specific exclusion of the Appellant/Insurer from the liability to pay penalty under the Workmen's Compensation Act, 1923, the Insurance Company could not be saddled with the liability to pay interest and penalty under Clauses (a) and (b) of sub-Section (3) of Section 4A of the Act, 1923. Therefore, the order for payment of penalty passed by the Commissioner against the Appellant/Insurance Company is liable to be and is accordingly set aside.

13. In the result, the appeal is allowed. The Appellant/Insurance Company shall not be liable for payment of penalty awarded by the lower Court and the said liability is solely of the employer. The impugned judgment is modified to the above extent. Rest of the conditions of the judgment shall remain intact. The substantial question of law framed in this appeal is decided in positive.

Sd/-

(Gautam Chourdiya)
Judge

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