**AFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

## Miscellaneous Appeal (Civil) No. 788 of 2013

- National Insurance Company Limited Branch Office National Insurance Company Limited Kamthi Line Rajnandgaon (C.G.) Through Authorized Signatory National Insurance Company Limited Bilaspur Divisional Office B-1 Taha Complex First Floor Ring Road -1 Priyadarshani Nagar, Vyapar Vihar Bilaspur P.S. & P.O. Bilaspur (C.G.)

**---- Appellant/Insurance Company/Non-applicant No.2**

**Versus**

1. Dhan Singh S/o Chhatar Singh aged about 48 years, Occupation Caste Gond R/o Village Adjal Post Office Sivni Police Station & Tehsil Manpur District Rajnandgaon (C.G.)

   **(Claimant)**

2. M/s Milikkarjun Construction Post Office & Police Station & Tahsil Gadhchirouli (Maharastra) Present Address Ward No. 1 Near Gayatri Mandir Dongargaon District Rajnandgaon (C.G.)

   **(Non-applicant No.1)**

**---- Respondents**

| | | |
|---|---|---|
| For Appellant/Non-applicant No.2 Insurance Company | : | Shri B.N. Nande, Advocate |
| For Respondent No. 1/ Claimant | : | Shri A.L. Singroul, Advocate |
| For Respondent No. 2/ Non-applicant No.1 | : | Shri Rakesh Thakur, Advocate |

**Hon'ble Shri Justice Gautam Chourdiya, J**
**Judgment on Board**

**01.05.2019**

**1.** This appeal is by the Insurance Company/non-applicant No.2 under Section 30 of the Workmen's Compensation Act, 1923 (in short "the Act") against the order dated 20.03.2013 passed by Commissioner, Workmen's Compensation Act-cum-Labour Court, Rajnandgaon (C.G.) in Case No. 58/W.C. Act/2009/Fatal, awarding compensation of Rs.1,76,217/- with interest @ 12% per annum from the date of application till realization.

**2.** As per claim petition filed by the Claimant who is husband of deceased Santo Bai aged about 45 years, the deceased was in the employment of non-applicant No.1 M/s Milikkarjun Construction, which was given contract of construction of road at village Ira Gaon. On 15.04.2009 the deceased during the course of her employment under non-applicant No.1 while road construction was going on at Ira Gaon, was doing the work of cleaning the Roller by putting water and on account of driving the Roller by its driver suddenly in a rash and negligent manner, Santo Bai fell down from the Roller and came under the wheel of the Roller which crushed her. As a result thereof, Santo Bai sustained fatal injuries and died instantaneously. As the death of Santo Bai occurred during the course of her employment, the Claimant, husband of the deceased, filed a claim petition under Section 22 of the Act before the Commissioner seeking compensation.

**3.** The Commissioner considering the pleadings of the respective parties and the evidence adduced by them, vide impugned judgment granted compensation in favour of the Claimant as mentioned above.

**4.** Cross-objection has also been filed by Respondent No.1/Claimant under Order XLI, Rule 22 of the Code of Civil Procedure for enhancement of compensation along with application for condonation of delay in filing the cross-objection.

**5.** On due consideration and no objection on behalf of non-applicants, delay in filing the cross-objection being bonafide is hereby condoned.

**6.** Learned counsel for the Appellant/Insurance Company submits that the interest part of the award as the liability to pay interest fastened on the Appellant/Insurance Company is contrary to the provisions of law. He submits that as per insurance policy, there is no contractual liability upon the insurance policy to indemnify the interest on the awarded amount as awarded by the Commissioner in view of the provisions of Section 4A of the Employee's Compensation Act, 1923. He has placed reliance on the judgment of the Supreme Court in ***New India Assurance Co. Ltd.*** Vs. ***Harshadbhai Amrutbhai Modhiya and another, 2006 ACJ 1699***.

**7.** Learned counsel for Respondent No.1/Claimant opposes the contention made by learned counsel for the Appellant/Insurance Company.

**8.** Learned counsel for Respondent No.1/Claimant submits that the Claimant has pleaded the income of the deceased as Rs.6,000/- per month and has proved before the Commissioner, but the Commissioner has considered the income of the deceased as Rs.80/- per day as a labour and assessed the monthly income of the deceased as Rs.2,080/- on the basis of attendance register as her presence was 26 days in a month which needs to be suitably enhanced.

**9.** Learned counsel for the Appellant/Insurance Company opposes the contention made by learned counsel for Respondent No.1/Claimant.

**10.** Learned counsel for Respondent No.2/non-applicant No.1 submits that non-applicant No.1 had already insured the twenty numbers of labourers under the workman compensation insurance policy and has duly assisted the Court.

**11.** Heard learned counsel for the parties and perused the material available on record.

**12.** The appeal was admitted for hearing vide order dated 16.06.2014, but no substantial question of law was framed. Therefore, for deciding the appeal, this Court is framing following substantial question of law:

> "*Whether the learned Commissioner for Employees Compensation-Labour Court, Rajnandgaon was justified in imposing interest @ 12% from the date of application upon the Appellant/Insurance Company?*"

**13.** With regard to penalty and interest part, having considered the rival contentions put forth by the counsel appearing for the parties and on perusal of the record what is necessary at this juncture is to take note of the provision of the Employee's Compensation Act,1923. Clause (a) of Sub section (3) of Section 4A of the Employee's Compensation Act reads as under:

> "(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;"

**14.** Before Commissioner, no any insurance policy proved by the Insurance Company/Appellant and it is admitted fact that insurance policy covers the risk of employees under the employment of non-applicant No.1 M/s Milikkarun Construction. Interest @ 12% per annum on the compensation from the date of application has been imposed by the Commissioner. There is no any contract between non-applicant No. 2/Insurance Company and non-applicant No.1/employer that the Insurance Company is not liable to pay interest on the compensation amount. The judgment relied upon by learned counsel for the Appellant/Insurance Company in the matter of *Harshadbhai Amrutbhai Modhiya* (supra) is of no help to the Insurance Company because in the said matter there was a specific contract between the Employer and the Insurer where the Insurer has specifically excluded any liability for interest or penalty under the Workmen's Compensation Act in the policy.

**15.** Apart from this, it is thus clear that the insurance policy, which was not exhibited before the Court of Commissioner, issued by the Insurance Company is a Workmen's Compensation (General) policy of insurance which covers risk of employees, i.e. 10 skilled & 10 unskilled labour, with wages less than Rs.4,000/- due to accident arising out of and in the course of their employment with the insured. Therefore, even though if in the process of putting water in Roller and on account of sudden motion of the Roller by its driver in a rash and negligent manner, deceased fell down and came under the Roller which crushed her and 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.1,76,217/- with interest @ 12% per annum from the date of application till realization, is just and proper. Therefore, the appeal preferred by the Appellant/Insurance being without any substance is liable to be dismissed.

**16.** So far as cross-objection filed by the Claimant seeking enhancement of compensation, it is not disputed that deceased Santo Bai was aged about 45 years and was working as labour under the employment of non-applicant No.1 and was earning Rs.80/- per day. In the impugned judgment, the Commissioner has given finding regarding income in para-7 and has considered the monthly income of the deceased as 2,080/- per month and has deducted 50% of the maximum amount of Rs.2,080/- which comes to Rs.1,040/-. Therefore, considering the age of the deceased i.e. 45 years, the Commissioner has applied the multiplier of 169.44 as per Schedule IV under Section 4 of the Employee's Compensation Act, 1923. Accordingly, the total compensation comes to Rs.1,040/- x 169.44 = Rs.1,76,217/-. In view of the above, the Commissioner has rightly considered the income of the deceased as Rs.2,080/- per month which need no interference by this Court. Therefore, the cross-objection filed by Respondent No.1/Claimant being without any substance is also liable to be dismissed.

**17.** In the result, appeal as well as cross-objection are hereby dismissed.

The substantial question of law framed in the aforesaid appeal stands answered in the above terms.

Sd/-
**(Gautam Chourdiya)**
Judge

vatti