AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 928 of 2014

- United India Insurance Company Ltd. Through Its Divisional Manager, Divisional Office- 2nd Floor, Gurukripa Towers, Vyapar Vihar Road, Bilaspur, Distt. Bilaspur C.G.

---- Appellant

Versus

1. Deepchand Satnami S/o Baishakhu Satnami R/o Village Navagaon, P.S. And Tah. Masturi, Distt. Bilaspur C.G.

2. Executive Engineer Public Works Department Building/road, Bilaspur, Division No. 1, Bilaspur C.G.

3. Engineering Projects India Limited 06, A Bakhtawar Nariman Point, Mumbai, Maharastra 400021, Hall Mukam- Engineering Projects India Limited, High Court Site, Bodari, Bilaspur C.G.,

4. Chhanulal Suryavanshi S/o Late Basawan Suryavanshi R/o Village Nagpura, P.S. Chakarbhatha, Distt. Bilaspur C.G.

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondent No.1	:	Shri Amit Kumar, Advocate.
For Respondent Nos.2 to 4	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

16/01/2019

This appeal under Section 30 of the Employees Compensation Act, 1923 is filed by the insurance company against the judgment dated 30.7.2014 passed by Commissioner, Workmen's Compensation Act, Labour Court, Bilaspur (CG) in Case No. 30/WC Act/08 (N.F.) granting total compensation of Rs.1,94,620/- in favour of the applicant/workman with interest @ 12% per annum from the date of application till deposit of the same, fastening liability on non-applicant No.4/insurance company and further imposing 50% penalty of the above amount i.e. Rs.97,310/- on the insurance company.

02. As per averments in the claim application filed under Section 10 read with Section 22A of the Workmen's Compensation Act, 1923 by the applicant/workman, on the date of accident i.e. 21.8.2007 he was working as labour under the employment of non-applicant No.3 Chhannulal Suryavanshi, who is petty contractor of non-applicant No.2 Engineering Projects (India) Ltd., for construction of High Court building. While centring work was going on, the applicant asked another labour Shyam Kartik for giving him wire, Shyam Kartik threw the wire towards the applicant, which accidentally hit the left eye of the applicant and it got completely damaged. At the time of accident, the applicant was 30 years of age and was earning Rs.3,600/- per month. By filing application, the applicant claimed Rs.2,24,618/- as compensation with interest @ 18% and penalty.

03. The Commissioner considering the evidence led by both the parties passed the impugned judgment as mentioned above.

04. Learned counsel for the appellant/insurance company submits that though he has raised various grounds in the memo of appeal, however, he is confining his argument only to the extent that the Commissioner was not justified in imposing penalty on the insurance company.

05. On the other hand, learned counsel for respondent No.1 supports the impugned judgment and submits that there is no illegality or infirmity in it warranting interference by this Court.

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

07. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

08. On the basis of pleadings of the parties and the evidence adduced by them, this Court vide order dated 6.10.2018 had framed a substantial question of law. As there is some typographical mistake in

the said substantial question of law, which does not affect the nature of the same, it is modified with the consent of the parties as under:

> *"Whether the learned Commissioner was legally justified in levying penalty on the appellant under Section 4A(3)(a) of the Employees' Compensation Act?*

09. The parties do not dispute the employment of the applicant under non-applicant No.3, who was petty contractor of non-applicant No.2, and the accident occurred on 21.8.2007 in which the applicant sustained injuries in his left eye. Quantum of compensation is also not under challenge. It is also not in dispute that as per insurance policy of non-applicant No.4, risk of the applicant was covered under the said policy. As per order sheet dated 21.2.2014 of the Commissioner also, the insurance policy has been admitted by the parties. In the Workmens Compensation (General) Policy issued by United India Insurance Company Ltd./non-applicant No.4, it has been mentioned as under:

> *"Whereas the insured named in the Schedule herein carrying on the Business described herein and no other for the purpose of this insurance has made to the United India Insurance Company Ltd. (herein after called "the Company") a proposed and declaration which shall be the basis of this contract and be deemed to be incorporated herein and has paid or agreed to pay the premium stated herein.*
>
> *Now this policy witnesseth that if any time during the period of insurance any employee in the insured's immediate service shall sustain personal injury by accident or disease arising out of and in the course of his employment by the insured in the Business and if the Insured shall be liable to pay compensation for such injury either under: the Law(s) set out in the Schedule or at common law, then subject to the terms exceptions and conditions contained herein or endorsed hereon the Company with indemnity the insured*

against all sums for which the insured shall be so liable and will in addition be responsible for all costs and expenses incurred with its consent in defending any claim for such compensation."

Thus, in view of the above, the insurance company is liable to indemnify the insured against the claim raised by the workman for the injuries suffered by him in an accident arising out of and during the course of his employment under the insured.

10. From perusal of the entire record, it is seen that there is no evidence which could suggest that information regarding the accident was conveyed to the insurance company by the insured/employer. Insurance company has been incorporated as a party on 19th August, 2008 i.e. after about six months of filing of the application for compensation by the applicant/workman on 2nd February, 2008. Thus, in this case, the employer had not given any intimation regarding the accident to the insurance company in time. Section 4A of the Workmen's Compensation Act (in short "the Act"), 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 cases 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 Gazette, 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 way 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."*

11. From the above, it is manifestly clear that compliance of Section 4A of the Act after the accident is the mandatory duty of the employer and the compensation shall be paid as soon as it falls due. It further contemplates that where the employer is in default in paying compensation within the stipulated period, it shall be liable to pay, in addition to the amount of arrears, simple interest @ 12% per annum and further, if the delay on the part of the employer is not justified, the employer shall also pay, in addition to the amount of arrears and interest thereon, penalty which shall not exceed fifty per cent of such amount. However, a proviso is there which stipulates that an order for penalty shall not be passed without giving a reasonable opportunity to the employer to show cause as to why it should not be passed.

12. In this case, no amount has been deposited by the employer within the stipulated period. Further, no intimation regarding the accident was given to the insurance company by the employer. The insurance company has been incorporated in the claim petition on 19th August, 2008 only and notice was given to the insurance company by the Commissioner after about one year of the accident. Thus, there is total non-compliance of Section 4A of the Act on the part of the employer/insured.

13. The Hon'ble Apex Court in the matter of ***Ved Prakash Garg Vs. Premi Devi and others, AIR 1997 SC 3854***, while dealing with the identical issue of imposition of penalty under the Workmen's Compensation Act, observed as under:

> "The liability to pay compensation under the Workmen's Compensation Act gets foisted on the employer provided it

is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the identical provisions under the very contracts of insurance reflected by the Policy which would made the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer under Section 3 read with Section 4A of the Compensation Act. All these provisions represent a well-knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier while discussing the scheme of Section 4A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one month it is not paid by the employer then as per Section 4A(3)(a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose bread-winner might have either been seriously injured or might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein. It is a statutory elongation of the liability of the employer to make good the principal amount of compensation within permissible time limit during which interest may not run but otherwise liability of paying interest on delayed compensation will ipso facto follows. Even though the Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section

4A(3)(a) still the liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally liable to be discharged by the insured employer. Consequently such imposition of interest on the principal amount would certainly partake the character of the legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not dehors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under section 4A(3) may start running for the purpose of attracting interest under sub-clause (a) thereof in case where provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then section 4A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of Section 4A(3)(a) of the Compensation Act.

But similar consequence will not follow in case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by Section 4A(3)(b) of the Compensation Act after issuing show cause notice to the employer concerned who will have reasonable opportunity to show cause why on account of some justification on his part for the delay in payment of the compensation amount he is not liable for this penalty. However if ultimately the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the delay, then the penalty would get imposed on him. That would add a further sum upto 50% on the principal amount by way of penalty to be made good by the defaulting employer. So far as this penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Workmen's Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term 'liability incurred' by the insured employer as contemplated by the proviso to Section 147(1)(b) of the Motor Vehicle Act as well as by the terms of the Insurance Policy found in provisos (b) and (c) to sub-section (1) of section II thereof. On the aforesaid interpretation of these tow statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the

Commissioner Section 3 and 4A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contigencies contemplated by Section 4A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner."

14. In the matter of ***Ferro Alloys Ltd. Vs. Mahavir Mahto and another, (2002) 9 SCC 450***, the Hon'ble Supreme Court held as under:

"5. The only contention put forth before us is that the entire liability including penalty and interest will have to be reimbursed by the Insurance Company and this aspect has not been examined by the learned single Judge in the High Court and needs examination at our hands. In Ved Prakash Garg v. Premi Devi and Ors. (1997) 8 SCC 1, this Court after examining the entire scheme of the Act held that payment of interest and penalty are two distinct liabilities arising under the Act, while liability to pay interest is part and parcel of legal liability to pay compensation upon default of payment of that amount within one month. Therefore, claim for compensation along with interest will have to be made good jointly by the Insurance A Company with the insured employer. But, so far as the penalty imposed on the insured employer is on account of his personal fault Insurance Company cannot be made liable to reimburse penalty imposed on the employer. Hence the compensation with interest is payable by the Insurance Company but not penalty. Following the said decision and for the reasons stated therein we modify the order made by the High Court to that extent. The appeal is allowed in part accordingly."

15. So far as issuance of show cause notice to the employer is concerned, in this case both the parties i.e. insured and the insurer were given ample opportunities by the Commissioner of putting forth their stand after framing a particular issue (Issue No.5) regarding imposition of interest and penalty on the party concerned. Therefore, in the given facts and circumstances of the case, mere non-issuance of show cause notice to the employer on the issue of imposition of penalty does not affect the right of the employer. However, as observed above, the Commissioner was not justified in levying penalty on the insurance company and it ought to have been imposed on the employer/insured i.e. non-applicant No.2 Engineering Projects (India) Ltd.

16. In the result, the appeal is allowed to the extent that the insurance company is exonerated of its liability to pay penalty and it is held that the penalty shall be payable by non-applicant No.2 Engineering Projects (India) Ltd. If the same has already been paid by the insurance company, it shall be entitled to recover the same from the insured/non-applicant No.2. The judgment impugned stands modified to the above extent only.

Sd/

(Gautam Chourdiya)

Judge

Khan