AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1342 of 2014

1. Nemichand Nahar S/o Late Chunni Lal Nahar, Managing Director, Durg Roadways Pvt. Ltd., G.E. Road, Durg, Tah. And Distt. Durg (C.G.) (Registered owner of Bus No. CG07 LP 0344 and Employer of Riyaz Mohd. Nakvi) (Non-applicant No. 1)

---- Appellant

Versus

1. Smt. Shahana Akhtar W/o Late Riyaz Mohammad Nakvi Aged About 39 Years,

2. Altaf Mohammad Nakvi (wrongly mentioned in impugned judgment as 'Nagvi') S/o Late Riyaz Khan (wrongly mentioned as 'Viryaz Khan') Aged About 15 Years,

3. Ku. Sahid Akhtar Nakvi D/o Late Riyaz Khan Aged About 13 Years,

4. Ku. Ajra Bano Nakvi D/o Late Riyaz Khan Aged About 8 Years,

5. Yusuf Mohammad Nakvi S/o Late Ejaz Mohammad Nakvi Aged About 69,

6. Smt. Asgari Bano W/o Yusuf Mohammad Nakvi Aged About 60 Years,

   Appellant No. 2 to 4 are minor, though their natural guardian mother Smt. Shahana Akhtar, Wd./o Late Riyaz Mohammad Nakvi;

   All are R/o Village Dhamdha, Ward No. 2, Musalmanpara, Dhamdha, P.O., P.S. & Tahsil Dhamdha, District Durg (C.G.). (Applicants)

7. The Oriental Insurance Company, Through Its Divisional Manager, Having Office At Parmanand Bhawan, G.E. Road, Durg, Tahsil And District Durg (C.G.) (Insurer of Bus No. CG07 LP 0344) Insurance Policy No. 192500/31/2011/1545 Valid from 16/05/2010 to 15/05/2011) (Non-applicant No. 2)

---- Respondents

For Appellant	:	Shri Ankit Borker, Advocate on behalf of Shri Ashish Surana, Advocate.
For Respondent Nos. 1 to 6	:	Shri C.K. Sahu, Advocate.
For Respondent No.7	:	Shri H.B. Agrawal, Sr. Advocate with Shri Pankaj Agrawal, Advocate.

Hon'ble Justice Shri Gautam Chourdiya

Judgment On Board

09/05/2019

1) This appeal is preferred by the non-applicant No. 1/owner and employer of Driver Riyaz Mohammad Nakvi under Section 30 of the Workmen's Compensation Act, 1923 now known as The Employees Compensation Act, 1923 (in short “the Act”) against the judgment date 08/10/2014 passed by Commissioner, Employee’s Compensation Act-cum-Labour Court, Durg (C.G.) in Case No. 103/WC Act/2010 Fatal, awarding compensation of Rs. 3,37,167/- with simple interest @ 12% per annum from the date of judgment till realization, if the said amount is not deposited within 45 days from the judgment.

Liability has been fastened upon non-applicant No. 1/ appellant and non-applicant No. 2/Insurance Company has been exonerated on ground that the vehicle was being plied in Nepal whereas the Insurance Company covers the risk arising out of an accident occurred within the geographical area of India and no driving license for driving vehicle in Nepal (internationally) was obtained by driver of offending vehicle.

2) As per averments in the claim petition, on 29/07/2010, deceased Riyaz Mohammad Nakvi, aged about 41 years, earning Rs. 7,500/- per month as a Driver under emplolyment of non-applicant No.1/appellant, was driving Bus bearing No. CG07 LP 0344 with a moderate speed. However, the deceased met with an accident due to mechanical breakdown (brake fail) and the Bus got uncontrolled near Mahendra Highway No. 5, Police Station Dumkibus VDC, District Nawalparasi, Nepal while the Bus was carrying the pilgrims to Kathmandu (Nepal) from Durg. As a result of this accident deceased Riyaz Mohammad Nakvi sustained grievous injuries and died. At the time of accident vehicle was owned by non-applicant No. 1/appellant Nemichand Nahar who was the employer of the deceased Riyaz Mohammad

Nakvi and insured with non-applicant No. 2/respondent No. 7 The Oriental Insurance Company Ltd.

3) Claimants' wife, children and parents of the deceased filed application under section 10 of Workmen's Compensation Act, 1923. The Commissioner considering the pleadings of the respective parties and the evidence adduced by them, vide impugned judgment granted compensation in favour of the claimants as mentioned above.

4) In this appeal, cross objection has also been filed by the claimants/respondent Nos. 1 to 6 for seeking interest from the date of accident till realization and challenging the judgment only on part of interest.

5) This appeal has been admitted for hearing on the following substantial question of law :-

"Whether the Insurance Company can be exonerated on the ground that the accident occurred out of territory on India at Nepal and the Insurance Policy cannot be held effective there?"

6) Heard counsels for the parties on appeal and also on cross objection and perused the material available on record.

7) Learned counsel for the appellant has raised various grounds in this memo of appeal, however, he is not pressing all those grounds and is assailing the judgment on the following grounds only:-

(i) That the learned Commissioner wrongly exonerated Insurance Company on the ground of accident having occurred at Nepal. As per Ex. D4C after obtaining valid permit from R.T.O. Durg and with the consent of the authority of Nepal vehicle is permitted to take pilgrims to Nepal and driver of the offending vehicle was having a valid and effective licence at the time of accident. As per Insurance Policy Ex. D1C two conditions are required to be fulfilled for covering the risk of passenger and driver of the vehicle i.e. first the driver having a valid and effective driving licence and second, valid permit under section 66 of Motor Vehicles Act. Both these conditions are fulfilled by the owner of the vehicle. As per decisions of **Punjab & Haryana High Court in FAO 152/2017 decided on 30/11/2017 in Anil Kumar V/s Roop Kumar Sharma and Another** and as per Section 146 and Section 147 of Motor Vehicles Act, there is no breach of policy condition and Insurance Company is liable to indemnify the owner/ employer in respect of payment of compensation to the claimants.

(ii) That no evidence is adduced by Insurance Company that deceased was not having effective and valid driving licence, therefore, the Insurance Company/ respondent No. 7 alongwith appellant is jointly and severally liable to satisfy the claim.

(iii) That no any evidence adduced by the Insurance Company regarding any breach of policy except challenging the geographical area. As per statement of NAW-01 Shanturam Sahu examined on behalf of non-applicant No. 2, he admitted that he has no knowledge whether the driver was having licence to drive the vehicle outside India. No any breach of policy is proved by the Insurance Company and the permit was duly extended to Nepal by the concerned RTO.

(iv) That the learned Commissioner erred in directing the appellant to deposit the amount of compensation within 45 days, failing which it shall carry interest @12% per annum from the date of accident till realization whereas the respondents/claimants have claimed interest @ 9% per annum. The direction for payment of interest from the date of accident, is contrary to the provisions of Section 4A of the Act, 1923.

8) Learned counsel for the respondent Nos. 1 to 6 supports the contention made by counsel for the appellant that learned Commissioner has wrongly exonerated Insurance Company, there is no any breach of policy as driving licence was issued by the R.T.O. in favour of deceased which was valid and effective on the date of accident, that deceased was permitted to drive the vehicle according to permit Ex. D4C in Nepal. He further submits that the learned Commissioner has awarded interest @12% per annum, if the amount is not deposited within 45 days from the date of application till realization, whereas as per judgment in the matter of ***Pratap Narain Singh Deo vs Srinivas Sabata & another, 1976 AIR 222,*** interest has to be awarded @ 12% from the date of accident till its payment.

9) Learned counsel for the respondent No.7/Insurance Company opposes the contention made by the counsel for the appellant. He further submits that as per policy Ex. D-3C, no any risk is covered by the Insurance Policy if vehicle is plied in Nepal. Further, driver of the vehicle was not having a valid and effective licence to drive the vehicle in Nepal. Therefore, it is a specific breach of policy and the Commissioner has rightly exonerated Insurance Company.

10) Heard, learned counsel for the parties on an appeal and cross objection and perused the material available on record.

11) It is not disputed by counsel for the parties that Ex. D4C permit was issued in favour of the owner of the vehicle for plying the vehicle in Nepal. Ex. D4C document is duly proved, thereby authorizing the owner to ply the vehicle No. CG07 LP 0344 from Durg to Nepal. The said permit was issued by the Regional competent authority i.e. Transport Authority, Durg.

12) Thus, from the document of Ex. D4C, it is evident that a valid permit was issued in favour of owner of the vehicle for plying the

same from Durg to Nepal. As per Ex. D8C the deceased was having a licence for heavy goods vehicle which was valid till 26/06/2012 and the same has been duly proved by NAW-03 Satyendra Kumar Soni examined behalf of non-applicant No. 1. The only contention of the respondent/Insurance Company is that since the vehicle in question was being plied outside India in Nepal, the driving licence held by the deceased was not valid and effective and as such it being a specific breach of policy condition, Insurance Company is not liable to pay compensation to the claimants. The **Punjab & Haryana High Court** while considering the identical issue in the matter of **Anil Kumar V/s Roop Kumar Sharma and Another, FAO 152/2017 decided on 30/11/2017** held as under **:-**

> **"***A bare perusal of Sections 146 and 147 of the Act makes it clear that the insurance policy is attached to the 'vehicle' in question and not to Geographical expense of the area of operation of the vehicle in question. The only requirement for coming in operation of the policy liability is; the use of vehicle in any public place. Therefore, the Insurance Company cannot avoid its liability to pay the compensation only on the ground that the vehicle was used in any particular city, state or a particular geographical area. Once a vehicle is insured qua third party it is insured for all geographical areas as per the provisions of the Act. Only plea the Insurance Company can take to avoid its liability qua third party can be; that the vehicle was not being plied in a particular geographical area in accordance with the provisions of the Act, if any, prescribed for that purpose. Every extent of liability qua third party is covered by the consolidated amount of premium required to be paid for insurance qua third party only. Therefore, to cover liability qua third party in any particular geographical area the insured cannot even be asked to pay any extra premium under the provisions of the Act. So the Insurance Company cannot even avoid its liability qua third party, on the ground that it can charge extra premium to cover any particular geographical area and that the insured has not paid that extra premium to cover that particular geographical area. Once insured, the vehicle is insured to cover all geographical areas; where the vehicle is authorised by the authorities to travel.*
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> *One can come across a thought that the Motor Vehicles Act extends only to 'whole of India' as per its section 1, so it does not cover the area outside India.*

However, this rational also does not exempt the Insurance Company from liability arising from the usage of the vehicle outside the geographical area of the Union of India. This section also implies that the Act would be applicable to all the citizens and subjects of India qua all the Motor Vehicular aspects in India. It does not exclude the liability of one citizen or entity of India qua the other citizen of India even if the same is incurred outside the geographical area of Union of India, particularly, when the liability is arising from the use of vehicle registered and insured in India. The extra-territorial jurisdiction of a sovereign nation state over its citizen and their rights and liabilities is well recognised concept of jurisprudence. The sovereign Nation State has plenary powers to make law regarding its citizens and subjects; irrespective of territorial limits, may be, for enforcement of such law in another country the reciprocity may be required. Extra-territorial jurisdiction of a nation state is, jurisprudentially valid on the basis of the 'causes and effects' qua the territory, citizens, subjects and objects of a nation state. Indian Parliament too has this power to legislate for extraterritorial causes and effects, as clarified by Article 245 of the Constitution of India. Hence, the Motor Vehicles Act shall also govern the rights and liabilities of citizens and subjects of India; arising from the provisions of Motor Vehicles Act, irrespective of territorial limits.

This intention of the Parliament to give extraterritorial effect to the provisions of this aspect of the Act is further clarified by the provisions; as contained in Sections 139 and 149 of the Motor Vehicles Act. Section 139 gives powers to the Government of India to make rules regarding the travelling of the vehicles registered in India to other countries. Section 149 (3) makes the Insurance Company liable to satisfy the decree or award for the accidents occurring outside India, even if the same is passed by a foreign Court, but according to provision of Section 149. If the award of a foreign Court passed as per provisions of Section 149 of the Act is enforceable against an Insurance Company in India, then there is no question of the liability of Insurance Company being excluded in Courts in India on the ground that accident occurred outside India.

It is not even disputed by learned counsel for the respondents that the bus in question had the necessary permission to ply in the area of Nepal. Therefore, its insurance policy would be deemed to be validly permitted to travel in the area of travel of the bus. Hence, for the liability arising from the accident involving the vehicle entitled to ply in Nepal, the insurer of the vehicle would be very much liable to make the payment.

13) Thus considering the facts and circumstances of the case, the fact that a valid permit was issued by the competent RTO in favour of the non-applicant No. 1/Owner for plying the vehicle Durg to Nepal which was effective on the date of accident, the fact that deceased was holding a valid and effective driving license for driving the offending vehicle, the terms and conditions of the Insurance Policy, a principle of law laid down in the matter **Anil Kumar V/s Roop Kumar Sharma and Another**(Supra), the fact that except leading evidence with respect to breach of policy condition on the ground of the use of vehicle outside the geographical area of India no any othesr evidence has been adduced by the Insurance Company regarding breach of policy conditions, this Court is of the opinion that the Commissioner was not justified in exonerating the Insurance Company of its liability on the ground that accident occurred outside territory of India at Nepal.

14) As regards grant of interest by the Commissioner @12% per annum from the date of accident till its payment in the event of non-deposit of the compensation amount within 45 days from the date of judgment as per Clause (a) of Sub section 3 of Section 4A of the 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 Gazette, on the amount due;"

A plain reading of the aforesaid statutory provision itself clearly reflects that if the employer committed a default in making the payment of compensation to the dependents of the deceased employee, the said amount shall carry interest @ 12% per annum. In the matter of ***Pratap Narain Singh Deo vs Srinivas Sabata & another, 1976 AIR 222,*** the Hon'ble Supreme Court held that an employer primarily becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of the employment and observed as under:

> It was the duty of the appellant, under section 4A(1) of the Act, to pay the compensation at the rate provided by section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making and application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement setting the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty.

15) Thus, the law laid down in **Pratap Narain Singh Deo** (Supra) is that employer becomes liable to pay compensation as soon as the personal injury is caused to the workman in the accident which arises out of and in the course of employment and therefore the relevant date for payment of the compensation and for payment of interest upon it, if the compensation is not paid within one month from the date of accident, would be the date of accident and not the date of award of Commissioner. It is ruled that liability to pay interest at the rate of 12% on the sum in terms of the Section 4A(3) of the Act would accrue from the date of accident itself if the sum is not paid by the employer within one month from the date of accident.

16) Hence, in view of the provisions of Section 4A(3)(a) of the Act in the light of the judgment in matter of ***Pratap Narain Singh Deo*** *(Supra),* this Court of the opinion that the Commissioner was not justified in awarding the conditional interest @ 12% per annum and the claimants are entitled for interest on the compensation @ 12% per annum from the date of accident till realization.

17) For the reasons stated above substantial question of law framed by this Court is answered in negative.

18) In the result, the appeal is allowed filed by non-applicant/employer and cross objection filed by respondents/ claimants are allowed with modification in the impugned judgment to the extent that it is non-applicant No. 2/Insurance Company who is liable to pay entire amount of compensation as assessed by the Commissioner to the claimants with interest @ 12% per annum from the date of accident till its payment. If any amount is deposited by the appellant/non-applicant No. 1 employer-owner and paid to the claimants, he shall have the right to recover the same from the Insurance Company/non-applicant no. 2 accordingly.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant