IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-10377-2014 (O&M)
Date of decision: 14.01.2019

NATIONAL INSURANCE COMPANY LTD. ... Appellant

Versus

MANJIT KAUR AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. R.C. Kapoor, Advocate
for the appellant.

Mr. Sanjeev Goyal, Advocate
for respondents No.1 to 4.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against order dated 28.10.2014 passed by the Commissioner under the Employees Compensation Act, 1923 whereby compensation has been assessed on account of death of Darshan Singh in the course of employment as driver on tipper/trolla No.PB-11-AE-9854 owned by Maghandeep Singh Mann respondent No.5.

The Tribunal has awarded compensation of Rs.4,10,935/- along with interest @ 18%. Further the claimants have been allowed funeral expenses of Rs.5000/- and cost of litigation to the tune of Rs.40,000/-.

Counsel for the insurance company has assailed the award with regard to payment of interest @ 18% per annum, holding the insurance jointly and severally liable to pay the compensation, issuance of show cause notice upon the insurance company under Section 4A(3)(b) as to why penalty should not be imposed for delay in payment of compensation and imposing costs of Rs.40,000/- to be borne by the Manager of insurance company. It is argued that under the provisions of Employees Compensation Act, 1923, interest is payable @ 12% per annum or the bank rate prevalent at the relevant time whichever is higher. It is argued that there is no evidence adduced by the claimants that bank rate of interest at the relevant time was more than 12% per annum, therefore, interest cannot be more than @ 12% per annum.

Counsel would urge that liability to pay penalty, if any, would be of the employer and not that of the insurance company. As such, notice issued by the Commissioner calling upon the insurance company to show cause as to why penalty should not be imposed should be set aside.

The insurance company has challenged liability to pay compensation on the premise that Darshan Singh driver was not holding a valid licence authorising him to drive the vehicle in question. It is argued that though Avtar Singh son of Darshan Singh tendered into evidence driving licence Ex.A6 but there is tampering of name of the licence holder. It is further argued that the insurance company produced report of Licensing Authority, Muradabad Mark A to the effect that the said licence was issued in the name of Sukhdev Singh. It is argued with vehemence that as Darshan Singh was not possessing a valid licence, the insurance company cannot be fastened with liability to pay compensation or may be given right of recovery against the insured after payment of compensation to the claimants.

With regard to costs of litigation, it is argued that the application for compensation was filed in December, 2012 and decided in October, 2014. There is nothing on record suggestive of the fact that the insurance company can be attributed any delay for non-conclusion of the proceedings till October, 2014. In addition, it is argued that no opportunity was provided to Manager of the insurance company before imposing liability with regard to payment of Rs.40,000/- as costs of litigation upon him.

Counsel representing the claimants, on the contrary, has supported findings of the Commissioner allowing compensation with interest and costs. It is argued that as the proceedings with regard to payment of penalty are still pending before the Commissioner, the insurance company should be left at liberty to raise any such objection before the said authority.

Counsel for the claimants has refuted contention of the insurance company that either Darshan Singh was not holding a valid licence or the insurance company can escape its liability to pay compensation on this premise with the submission that the policy obtained by the insured is in respect of third party claim under the Motor Vehicles Act, 1988 as well as under the Workmen's Compensation Act, 1923 in respect of three employees of the insured on payment of special premium of Rs.75/-.

I have heard counsel for the parties, perused the paper book and records.

Before adverting to the submissions with regard to challenge qua payment of interest, costs etc., it is appropriate to deal with contention of the insurance company that it is not liable to pay compensation for want of driving licence Ex.A6 to be valid and effective. Avtar Singh son of Darshan Singh appeared in the witness box and tendered into evidence his affidavit Ex.AW2/1 and driving licence Ex.A6. In cross examination, no such issue was raised by counsel for the insurance company that driving licence Ex.A6 has been tampered with to change name of holder of driving licence. The insurance company failed to adduce any evidence to prove that driving licence produced on record is not valid and genuine. The report purported to be prepared by some licensing authority is only a marked document. This apart, any such defence available to the insurance company under Section 149(2) of the Motor Vehicles Act, 1988 in a claim preferred before the Motor Accidents Claims Tribunal is not available under the Employees Compensation Act, 1923 as there is no provision similar to the one under Section 149(2) of the Motor Vehicles Act, 1988. Analyzed from any angle, the insurance company cannot escape its liability to pay compensation.

This brings the Court to question of interest and show cause notice to impose penalty. Counsel for the claimants has failed to point any materials on record justifying grant of interest more than @ 12% per annum. That being so, findings of the Tribunal allowing interest @ 18% per annum cannot be allowed to sustain and accordingly set aside, thus, claimants shall be entitle to simple interest @ 12% per annum from the date of accident till realization.

The insurance company has been issued show cause notice as to why 50% penalty should not be imposed for delay in payment of compensation. Counsel for the claimants has failed to point out any special contract between the insured and insurance company whereby the insurance company has undertaken liability even to pay penalty by way indemnification of the insured. In the given scenario, show cause notice issued by the Commissioner with regard to imposing penalty upon the insurance company is patently illegal and set aside. However, it is clarified that the claimants are at liberty to take recourse to appropriate remedy for pressing their claim for penalty against the employer.

The Tribunal has quantified the costs at Rs.40,000/- per month recoverable from Manager of the insurance company. The costs is imposed to indemnify a successful litigant. The proceedings remained pending for less than two years. As such, costs of litigation are reduced to Rs.10,000/- and the same would be recoverable from the insurance company and not from Manager of the insurance company.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

(REKHA MITTAL)
JUDGE

14.01.2019
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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No