**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-3240-2017 (O&M)

Date of Decision:18.11.2019

New India Assurance Company Limited ... Appellant

Vs.

Roshini Devi and others ... Respondents

CORAM : HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Nitin Gupta, Advocate
for the appellant.

Mr. Ishant Sondhi, Advocate and
Mr. Manoj Kumar Taya, Advocate
for respondents No.1 to 4.

NIRMALJIT KAUR, J. (Oral)

C.M. No.10652-CII-2017

For the reasons mentioned in the application, the application is allowed and delay of 97 days in filing the appeal is condoned.

Main case

The present appeal has been filed by the appellant-Insurance Company only to the extent vide which they have been directed to deposit the amount of interest.

While praying for setting aside the award to the extent vide which the interest has been imposed upon them, learned counsel for the appellant contended that insurance company is not liable to pay the amount of interest as there is no provision for payment of interest by the company and there is no statutory liability under the Workmen's Compensation Act, 2004. Reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of ***New India Assurance Company Limited*** v. ***Harshadbhai Amrutbhai Modhiya***; 2006 (2) R.C.R (Civil) 814.

Learned counsel for the respondents while vehemently opposing the claim of the appellant submitted that the Workmen's Compensation Policy placed on record as Annexure A-1 does not include any interest or penalty in case of failure to comply with the requirements laid down under the Workmen's Compensation Act, 1923 (for short “the Act 1923”). Since there was no violation or non compliance of the provisions of the Act 1923, the appellant-Insurance company was liable to pay the interest.

Thus, only question before this Court is whether respondent No.2 had complied with the requirements laid down under the Act 1923 or not?

A perusal of the award shows that it was their stand in the claim petition filed by the claimants that the respondent-employer was duly informed about the accident but the respondent-employer refused to give any compensation and also did not disclose the name of the insurance company. As a result, they were forced to file the claim petition without the name of the insurance company. The name of the insurance company was disclosed for the first time in their written statement stating that they had taken insurance cover note from New India Insurance Company Limited, Panipat. In these circumstances, the appellant-Insurance Company cannot be fastened with its liability to pay the interest. The argument that the insurance company should have paid immediately after they were issued notices by the Court in the claim petition does not help as the respondent-employer was required to fulfill the condition under the W.C Act or W.C Policy at the first instance. They were required to inform the insurance company immediately and further were required to disclose the name of the company to the claimants. In fact, it appears that they tried to conceal the name of the insurance company to save their skin.

Accordingly, this appeal is allowed and the award is set aside to the extent vide which the insurance company is held liable. However, the same can be recovered by the claimants from the employer. It is clarified that the insurance-company is otherwise liable to pay the amount of interest levied by the same award qua the period from 18.6.2016 which is the date of passing of the order till its realization as ordered by the said award.

At this stage, learned counsel for the appellant states that they have deposited the interest amount which is lying with the learned Commissioner. If it is so, the same be disbursed to the respondents. However, the appellant-Insurance company is at liberty to recover the same from the employer.

(NIRMALJIT KAUR)
JUDGE

18.11.2019
rajeev

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**