A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.421 of 2013 and 322 of 2016

(From the judgment dated 25th July, 2013 passed by the learned Commissioner for Employee's Compensation–cum-Assistant Labour Commissioner, Berhampur, Ganjam in W.C. Case No.23 of 2010 and judgment dated 25th May, 2015 passed by the learned Commissioner for Employee's Compensation–cum-Assistant Labour Commissioner, Angul in E.C. Case No.6 of 2014)

Divisional Manager, Oriental Insurance Company Ltd. .... ***Appellant in both cases***

-versus-

Dhanu Nayak and Others ***(in FAO No.421 of 2013)***

Kapa Chelmaya Reddy and Others ***(in FAO No.322 of 2016)***

.... ***Respondents***

Advocate(s) appeared in this case:-

For Appellants	:	Mr. G.P. Dutta, Advocate (in FAO No.421 of 2013 Mr. Subrata Satpathy, Advocate (in FAO No.322 of 2016)
For Respondents	:	Mr. B. Pr. Das, counsel for Respondents 1&2 (in FAO 421/2013) Mr. P.K. Panda, counsel for Respondents 1-5 (in FAO 322/2016)

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
10th October, 2022

B.P. Routray, J.

1. Both the appeals involve a common question of law and thus are taken up together.

2. FAO No.421 of 2013 at the instance of the insurer is directed against impugned award dated 25th July, 2013 passed in W.C. Case No.23 of 2010 of the learned Commissioner for Employee's Compensation–cum-Assistant Labour Commissioner, Berhampur, Ganjam, wherein compensation to the tune of Rs.4,33,820/- along with interest @ 12% amounting Rs.2,25,587/- has been directed for payment in favour of the claimant-workman on account of his death arising out of and in course of his employment as electrical workman.

3. FAO No.322 of 2016 by the insurer is directed against impugned award dated 25th May, 2015 passed in E.C. Case No.6 of 2014 of the learned Commissioner for Employee's Compensation–cum-Assistant Labour Commissioner, Angul, wherein compensation to the tune of Rs.5,96,960/- along with interest @ 12% per annum has been directed for payment in favour of the claimant-workman on account of his death arising out of and in course of his employment as Welder.

4. So far as the employment of the respective workmen, their death and remuneration paid to them are not seriously disputed. The main objection raised is regarding payment of interest from the date of accident. It is submitted that since in both the cases the insurer has been directed to indemnify the compensation amount on behalf of the employer, such direction for payment of interest from the date of accident in absence of any intimation sent by the employer regarding the accident to the concerned insurer, is illegal and erroneous. It is contended that for the fault of the employer to intimate the fact of accident immediately to the insurer is not within the fault of the insurer and so any such interest payable by the employer is unindemnifiable by the insurer and the employer should be held liable to pay the same.

5. The law regarding payment of interest from the date of accident has been settled in various decisions starting from the case of ***Pratap Narain Singh Deo v. Srinivas Sabata and Anr., AIR 1976 SC 222.*** Also see the decision in ***Kerala State Electricity Board and Anr. v. Valsala K. and Anr., AIR 1999 SC 3502*** and ***Senior Divisional Manager, National Insurance Company Ltd. v. Suresh Kumar Behera and Anr., 2019 (2) TAC 461 (Ori).*** This court also in FAO No.535 of 2014, disposed of on 4th May, 2022 have reiterated the principle holding that the interest is payable on the compensation amount from the date of accident. There is no quarrel over the principles settled as above.

6. It is the contention of the insurers that they are not the employers and they were not intimated about the accident in time by the employer and hence the fault lies with the employer for which the insurer cannot be held liable. It is submitted that since it is the fault of the employer, the employer therefore should pay the interest amount and not the insurer.

7. The contract of insurance to indemnify the employer in the matter of workman compensation is not a statutory policy unlike in motor vehicular accident compensation cases. Nevertheless, the insurer takes the liability of the employer by executing the contract to indemnify the compensation amount on behalf of the employer payable to the workman or his dependents. The terms and condition of contract is a matter between the employer and the insurer. The workman is least concerned with the terms of agreement or violation of any clause thereof in the contract between the employer and the insurer unless it impacts ceasing or termination of the contract. Undoubtedly, the insurer does not question its liability to indemnify the employer. Therefore, the reason put-forth that for the fault of the employer the insurer should not be directed for payment of interest amount to the workman is not a sound reasoning. Because, the workman is not party to the contract and he is the benefactor only. As per the contract, failure on the part of the employer to intimate about the accident to the insurer is a matter between the employer and insurer and the workman should not be allowed to suffer for that. Once the liability to indemnify the employer remains undisputed, the insurer should pay the entire compensation including interest part to the benefactor. Whatever disagreement the insurer has against the employer, it should be limited between the employer and insurer unaffecting the rights of the workman in whose benefit the contract is made.

8. A further submission is made stating that no interest is payable unless there is default of payment of compensation within thirty days. Such contention raised by the insurer is also found without merit in view of a recent decision of Hon'ble Supreme Court in the case of ***Ajay Kumar Das and Anr. v. The Divisional Manager and Anr., 2022 Live Law (SC) 102.*** In the said case the Supreme Court relying on the decision of ***P. Meenaraj v. P. Adigurusamy and Anr., Civil Appeal No.209 of 2022,*** decided on 6th January, 2022, have held that, the applicant is entitled to interest from the date of accident and rejected the submission that the award of interest should be after expiry of thirty days from the date of accident. Therefore, all such contentions raised by the insurer in this regard are rejected.

9. As stated earlier no serious dispute is raised with regard to the quantum of compensation in either case, which otherwise also do not found unreasonable to warrant any interference.

10. In the result both the appeals are dismissed.

11. Since the compensation amounts in terms of the direction of learned Commissioner have already been deposited without interest component, the insurers in both appeals are directed to deposit the interest component within two months from today, where-after the entire amount shall be disbursed in favour of the respective claimants along with accrued interest, if any, without further delay.

(B.P. Routray)
Judge

M.K. Panda/Sr.Steno