26.06. 2023
item No.09
n.b.
ct. no. 551

FMA 909 of 2010
with
IA No.CAN 2 of 2011(old No CAN 889 of 2011)

Smt. Alpana Das
Vs.
Oriental Insurance Company Ltd. & Anr.

Mr. Krishanu Banik
.....for the appellant.
Mr. P. K. Pahari
.... For the respondents.

The instant appeal has been preferred by the claimant against the Insurance Company being aggrieved by dissatisfied with the judgment and award dated October 15, 2009 passed by the Learned Commissioner of Workmen's Compensation(Second Court West Bengal) in claim case No. 66 of 2007. A very short pointed is involved in this appeal.

The appellant was awarded a sum of Rs.2,06,672/- as compensation. It is the only ground in the appeal that such award of compensation is not coupled with any interest.

Whether the interest would be added in an award Workmen's Compensation Act is the issue involved here.

Learned advocate for the appellant submitted before this Court on the peculiar facts and circumstances of this case, one labour who was painting the wall fell from 4th Floor and succumbed to his injuries in this case. No compensation was paid by the employer or the Insurance Company for which the claim application was filed. Learned Commissioner has passed the award in favour of the claimant which is not disputed but the award does not carry any interest. He submitted before this Court that by virtue of decision passed by Hon'ble Supreme Court in **Pratap Narain Singh Deo Vs. Shrinivas Sabata & Anr. reported in 1976 AIR 222.** it has been held that the award of Workmen Compensation Act shall coupled with any interest.

He also cited another decision passed by the Division Bench of this High Court **Manju Devi Vs. New India Assurance Co. Ltd. & Anr. reported in 2009 ACJ 2851**. He also submitted before this Court that the clause of the insurance policy cannot be entered into at the time of appeal as the policy paper was not properly executed before the Learned Commissioner.

On the other hand, learned advocate for the Insurance Company cited a decision in **P. J. Narayan Vs. Union of India & Ors. reported in 2004 ACJ 452** wherein the particular clause of the insurance policy in case of compensation under Workmen's Compensation Act 1923 was the issue wherein it was held that there one no statutory liability of the Insurance Company to pay the interest. So, the Insurance Company is at liberty to refuse the insurer to pay the interest.

Heard the learned advocates and perused the decision passed by the Hon'ble Supreme Court and this High Court. In **Pratap Narain Singh Deo(Supra)** it appears that a Carpenter lost his hand in that case, whereas the Commissioner ordered the compensation along with penalty to the extent of 50% together with interest at 6% per annum. This is also been ordered by the Hon'ble Supreme Court that the disability of the loss of his hand would be 100 per cent disability. In that case, the interest and penalty was ordered. Following the judgment of **Pratap Narain Singh Deo(Supra)**and **Manju Devi(Supra)**, this Division Bench of this court ordered that the compensation under Workmen's Compensation Act shall be 12% per annum after the expiry of one month from the date of accident till its actual realization. In **P. J. Narayan(Supra)** Hon'ble supreme Court the clause of specific endorsement mentioned in the policy was an issue and wherein the Hon'ble Supreme Court has held that in the absence of any statute to that effect, the Insurance company cannot be forced by the Court to take on liabilities which they do not want to take on.

It appears from the LCR that the insurance policy was filed by the Insurance Company along with additional written statement and the original Insurance policy was annexed with additional written statement as annexures A, B and C respectively. The original insurance policy papers being the part of the pleadings can be looked into and it requires no specific proof.

The endorsement as stated in the policy paper is reads as follows:

"It is hereby understood and agreed that the cover provided under this policy shall not extend to indemnify the Insured/Insureds in respect of any interest and/or penalty which may be imposed on him/then on account or his/their failure to comply with the requirements laid down under the Worksmen's Compensation Act 1923 and Subsequent amendments of the said Act."

Section 4(1)(a) Employees Compensation Act 1923 enumerated :

"Sec 4(1) Subject to the provisions of this Act the amount of compensation shall be as follows namely:

Where death results form in the injury	an amount equal to 50% of the monthly wages of the deceased employee multiplied by the relevant factor Or An amount of one lakh and twenty thousand rupees whichever is more;"

Section 4A is provide for the compensation to be paid when due and penalty for default. It reads as "4(A)(1) compensation under Section 4 shall be paid as soon as it falls due.

(2)….

(3) Where any employer is default in paying the compensation due under this Act within one month from the date it feel due, the Commissioner shall-

(a) direct that athe employer shall, in addition to the amount of the arrears, pay siple interest thereon at the rate of twelve per cent per annum or at sucdh higher rate not exceeding the maximum of the leading rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and"

After perusal of the statute itself, it appears that the compensation has specifically mentioned in Section 4(1)(a) of the statute and the default clause has mentioned in Section 4(A). The policy was covered only for the compensation in respect of death and injury but not for the default clause.

In considering the judgment of Hon'ble Supreme Court in **Pratap Narain Singh Deo(Supra)**as well the judgment of this Court passed in **Manju Devi(Supra)**I am of a view that cases mentioned in **Pratap Narain Singh Deo(Supra)**case is solely different and there was no such policy with the hand of the Hon'ble Supreme Court to determine the matter. For that reason, the interest was directed to be paid. But in the instant case, the policy is very specific regarding non-covering the specific default clause. Thus, the writ petition preferred before the Hon'ble Supreme Court wherein it has been specifically ordered that the Insurance Company cannot be forced by the Court to take liability. Thus, considering the entire aspect, I find that judgment passed by the Hon'ble Supreme Court in **P. J. Narayan(supra)** very muchapplicable in this case.

Thus, I find no merit to entertain the appeal.

Connected applications, if any, are also dispose of.

Accordingly, the appeal is considered and dismissed.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)