Nikita

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.524 OF 2012
WITH
CIVIL APPLICATION NO.564 OF 2018
IN
FIRST APPEAL NO.524 OF 2012

Hiravati Suresh Yadav & Ors. … Appellants
V/s.
Vijay B. Malunj (Wallunj) & Anr. … Respondents

Ms. Rina Kundu for the appellant

Ms. Poonam Mital for respondent No. 2

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 14, 2023

P.C.:

1. Following substantial question of law arises in this first appeal:

> 1) Whether, the Insurance Company which has insured the employee against the claim for compensation arising out of the provisions of the Workmen's Compensation Act, 1923 is liable to pay award of Workmen's Commissioner imposing penalty and interest against the insured employer under Section 4A(3)(b) of the Employee's Compensation Act 1923.
>
> 2) Whether the Commissioner was justified in directing payment of simple interest at the rate of 12% per annum, from the date of judgment instead of 30 days from the date of accident.

Facts giving rise to filing of present first appeal are as under.

2. On 2nd August, 2009 deceased workman met with an accident while he was on duty as a cleaner on the Motor Trailor No. MH-06-AQ-5155 belonging to opponent No. 1. During the course of treatment, the workman died on 3rd August, 2009. He was getting salary of Rs. 4,000/- (Rupees Four Thousand Only) per month from opponent No. 1.

3. The applicant being the widow of deceased and applicant Nos.2 to 5 being children and applicant Nos.6 and 7 being the parents of the deceased, filed claim with Commissioner of Workmen's Compensation claiming amount of Rs.4,23,580/- .

4. The opponent No. 1/employer failed to remain present despite service of notice.

5. The insurance Company contested claim by filing written statement and submitted that opponent No. 1 was required to comply all the conditions of insurance policy. It is contended that applicants have no cause of action to claim compensation from the Insurance Company. The company is not liable to pay interest.

6. The learned Commissioner framed necessary issues. The applicants filed affidavit of applicant No.1 to prove their case. It is stated in the affidavit of evidence that on 2nd August 2009 at about 3.00 a.m. the deceased was on duty. While going on on Dronogari Pune Road, near Sukhapur Bridge, the iron rods which were tied with the material of the trailor got broken, with the result trailor turned turtle and deceased sustained serious head injuries. The workman died during the treatment. Spot Panchanama below Exhibit U-16 indicates that the workman sustained serious head injuries and was admitted to nearby hospital. The evidence on record produced by applicant indicates that the deceased was working as a cleaner in motor trailor owned by opponent No. 1 and died during the course of employment. This material statement in the examination-in-chief remained unchallenged

7. The applicant No.1 stated in her evidence that the deceased was getting salary of Rs. 4,000/- (Rupees Four Thousand Only) per month and was aged 28 years. However, the applicants failed to produce any document to prove exact age of the workman. The Commissioner based on post mortem report adjudicated the age of the deceased as 30 years on the date of accident.

8. Since the applicant proved before the Commissioner that the deceased died during the course of employment and was 30 years of age getting salary of Rs. 4,000/- (Rupees Four Thousand Only) per month, considering Section 4(1)(a) and Schedule IV of the Workmen's Compensation Act, the applicants were held to be entitled for compensation of Rs.4,15,960. But while directing payment of penalty, the Commissioner directed employer to pay penalty at the rate of 25% of the amount of compensation and simple interest at the rate of 12% per Annum within one (1) month from the date of the judgment till the realization.

9. Relying on the judgment of Apex Court in the case of **Ved Prakash Garg v. Premi Devi & Ors.** reported in (1997) 8 SCC 1, it is submitted on behalf of the appellants that the liability to pay interest and penalty is also on the Insurance Company. The Commissioner, therefore, erroneously held that only opponent

No.1 is liable to pay penalty and interest. It is submitted that instead of 25% penalty, 50% ought to have been directed to be paid. The payment of interest ought to have been directed to be paid from the date of expiry of period of 30 days of the date of incident.

10. The learned advocate for the Insurance Company submitted that the Insurance Company cannot be held liable for payment of penalty and interest. The Commissioner has rightly directed 25% penalty and payment of compensation from the date of judgment.

11. Rival contentions fall for consideration. Insofar as the finding of death during the course of employment and entitlement to seek compensation is concerned, in absence of appeal from the Insurance Company or the employer, the entitlement to receive compensation is not in dispute. Only point which arises for consideration is whether the Insurance Company is liable to pay the opponent penalty and interest. The learned Apex Court in the case of **Ved Prakash Garg** (supra) held as under:

> "... In the light of what we have discussed earlier it must be held that the said view is partly correct in so far as it is held that the insurance company would be liable to pay the amount of interest imposed upon the insured employer by the Workmen's Commissioner under Section 4A(3). But to the extent it seeks to cover even the penalty amount and makes obligatory on the insurer to meet the said claim of penalty imposed upon the insured employer it must be held that the same is not correct and is not borne out from the scheme of the Acts discussed by us. To that extent the said decision of the learned Single Judge would stand partly overruled. In the case of United India Insurance Co. Ltd. v. Roop Kanwar & ors. (supra) a learned Single Judge of the Rajasthan High Court had to consider a situation where on

payment of additional premium the insurance company had agreed in the light of endorsement no.16 of the Policy to cover all liabilities incurred by the insured under Workmen's Compensation Act. In view of this contractual coverage of liability the insurance company in that case was held liable to meet the claim of penalty and interest as imposed upon the insured under Section 4 A (3) of the Compensation Act. This judgment proceeded on its own facts and was concerned with a situation coverse to the one as was examined by the Karnatake High Court in Oriental Insurance Co. Ltd. v. Raju & Ors. (supra). In the case decided by the Karnataka High Court, as seen earlier, there was an express exclusion of such liability of the insurance company. In the aforesaid case decided by the Rajasthan High Court there was an expression inclusion of such liability for the insurance company which had taken additional premium. This judgment also, therefore, is of no assistance to either side.

As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section Act on the conjoint operation of Section 3 and Section 4A sub-additional amount of compensation by way of penalty imposed on the insured employer by the Workman's Commissioner under Section 4(3) (b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.

12. In view of pronouncement of the Apex Court in the case of **Ved Prakash Garg (**supra), the Insurance Company is liable to pay the amount of interest imposed upon insured employer by the Workmen's Commissioner under Section 4A(3). Sub-section 4A (3) reads as under:

"**4-A. Compensation to be paid when due and penalty for**

default -

(1)---

(2)---

(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; and

b) If, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. Of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation – For the purposes of this sub-section, “scheduled bank” means a bank for the time being included in the Second Scheduled to the Reserve Bank of India Act, 1934 (2 of 1934).”

13. Careful reading of Sub-section (3) of Section 4-A makes it clear that the liability to pay compensation arises on completion of one (1) month from the date of accident. Therefore, the Commissioner ought to have directed payment of simple interest at the rate of 12% per annum from the date of expiry of one month. Considering the date of accident till the date of realization of amount, sub-clause (b) of Section (3) of Section 4-A, the

Workmen's Commissioner directed employer to pay penalty not exceeding 50% in the absence of justification for the delay. The employer failed to contest the claim in spite of service of notice. The liability to pay compensation arises on completion of period of one (1) month. In absence of any objection raised by the employer, there is no justification for delay. The Commissioner, therefore, ought to have directed employer to pay 50% of the amount of compensation towards penalty.

14. For the reasons stated above, the first appeal succeeds.

15. The operative part of the order dated 23rd January 2012 stood modified as under.

16. The opponent employer is directed to pay penalty of 50% of the amount of compensation.

17. The opponent No. 1 and 2 are jointly and severally directed to pay simple interest at the rate of 12% per annum from the date of 3rd September 2009 till realization of the amount.

18. The first appeal is allowed in above terms. No costs.

(AMIT BORKAR, J.)