IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1392 of 2022
and C.M.P.No.10176 of 2022

The General Manager,
Thiasola Estate,
Thiasola Post,
The Nilgiris District – 643 230 ...Appellant

Vs.

1.M/s.National Insurance Company
Betboard, Coonoor,
The Nilgiris District – 643 101.

2.J.Nagamma
...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act, 1923, as amended by Act of 1984, against the portion of the award directing the appellant herein to pay interest on compensation amount Rs.4,13,537/- from the date of accident to till date of deposit passed by the Workmen Compensation Commissioner, Coonor in E.C.No.187/2017 dated 26.11.2018.

For Appellant : Mr.K.Lavan

For Respondents : Mrs.Sreevidhya for R1
No appearance for R2

JUDGMENT

This appeal challenges the award passed by the learned Workmen Compensation Commissioner, Coonoor in EC.No.187 of 2017 dated 26.11.2018, directing the appellant herein to deposit interest for the compensation amount at the rate of 12% p.a., from the date of accident till payment.

2. (a) The appellant is the employer of the second respondent's husband. The employee while working in Thiasola Estate, died on 03.05.2015.

(b) The second respondent claimed compensation against the appellant herein and the first respondent who is the insurer stating that the deceased died during the course of the employment; that the Workmen Compensation Commissioner, Coonoor (hereinafter referred to as Commissioner for the sake of convenience) held that the deceased died due to stress and strain involved in the employment and therefore, the second respondent was entitled compensation. The Commissioner directed the first respondent/Insurance Company to pay a sum of Rs.4,13,537/- as compensation to the second respondent. The Commissioner also directed the appellant to pay the interest for the said compensation amount since it held that the first respondent was not liable to pay interest as per the terms of the policy.

3. Aggrieved by the direction issued by the Commissioner to the appellant to deposit the interest on the compensation, the appellant has filed the above appeal.

4. The learned counsel for the appellant, submitted that it is true that the Insurance Policy did not cover the liability of the insured for interest and penalty; that however, in the instant case, the Insurance Company had contested the claim petition and even denied the policy; that therefore, the delay occurred only due to the act of the first respondent/Insurance

Company and hence, the appellant cannot be made liable to pay interest for the compensation. The learned counsel relied upon the Judgment of Rajasthan High Court in ***Oriental Insurance Co. Ltd Vs. Vilas Devi and others*** reported in ***2001 ACJ 950*** in support of his submission**.** The learned counsel further submitted that in any event, the direction to pay the interest on the date of accident is erroneous and that the appellant would only liable to pay interest from the date of claim petition as held by this Court in ***Velu Ammal, Minor Vs. Sri Krishna Agencies and United*** reported in ***2007 (3) CTC 378*** in support of his submission.

5. Per Contra, the learned counsel for the first respondent/Insurance Company submitted that the terms of the policy are clear and the appellant is bound by the terms; that the learned Commissioner, had extracted the terms of the policy and rightly held that the Insurance Company is not liable to pay interest; that there is no reason to interfere with the said finding and hence, prayed for dismissal of the appeal.

6. Though notice has been served on the second respondent, none has entered appearance on her behalf.

7. This Court finds that as per the terms of the policy under the head Exclusions, the following Clause is found:-

> *"This Policy shall not cover liability of the insured: "(d) For interest and /or penalty imposed on the insured under law or otherwise."*

8. However, it is the case of the appellant that since the delay was caused by the Insurance Company due to an unfair denial of the claim, the appellant is not liable to pay the interest. It is seen from the records that the appellant remained ex-parte before the Commissioner. The appellant ought to have participated in the proceedings before the Commissioner, if it was their case that the Insurance Company/first respondent's denial of the claim was unjust. Be that as it may. Merely because, the Insurance Company had filed a counter and contested the claim petition, it cannot be said that they were responsible for the delay in the award of compensation. The parties are

bound by the terms of the policy, as per which, the first respondent would not be liable to pay interest. Hence, the submission of the learned counsel for the appellant that the delay is only due to the first respondent and hence, they are not liable to pay interest cannot be accepted.

9. As regards the second submission of the learned counsel for the appellant that interest from the date of claim petition and not from the date of accident, this Court finds that the larger Bench of this Court in ***Branch Manager, United India Insurance Co. Ltd., Vs. Nagammal and others*** has held that the interest has to be calculated from 31st day after the accident and hence, the appellant is liable to pay interest from the said date.

10. Therefore, this Court is of the view that the direction issued to the appellant cannot be faulted. Thus, there is no merit in the instant appeal, hence, this Civil Miscellaneous Appeal deserves to be dismissed. The appellant is liable to pay the award amount of Rs.2,00,810/- together with interest at 7.5% per annum from the date of the award till the date of payment.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No Costs.

08.08.2023

dk
Index: Yes/No
Neutral Citation: Yes / No

<u>Copy to:-</u>

1.The Workmen Compensation Commissioner,
Coonoor.

2. The Section Officer,
VR Section,
High Court of Madras,
Chennai – 104.

SUNDER MOHAN, J.

dk

C.M.A.No.1392 of 2022
and C.M.P.No.10176 of 2022

08.08.2023

CMA No.1392 of 2022

SUNDER MOHAN, J.

This appeal has been listed today under the caption 'for being mentioned', since the learned counsel for the appellant submitted that there are certain typographical errors in the order dated 08.08.2023 made in CMA No.1392 of 2022. He further submitted that in paragraph No.10, instead of the word 'interest', it is stated as 'award' and the interest of 7.5% per annum on the interest amount is stated to be payable from the date of award and it has to be actually from the date of deposit i.e. 18.05.2019.

2. In view of the above, Registry is directed to replace paragraph No.10 as follows and issue a fresh order copy, forthwith.

"10. Therefore, this Court is of the view that the direction issued to the appellant cannot be faulted. Thus, there is no merit in the instant appeal, hence, this Civil Miscellaneous Appeal deserves to be dismissed. The appellant is liable to pay the interest amount of Rs.2,00,810/- together with interest at 7.5% per annum on the said amount which become payable on 18.05.2019 (i.e., the date of deposit of the award amount by the Insurance Company) from the said date i.e., 18.05.2019 till the date of payment."

04.10.2023

dk/ars