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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2024

PRONOUNCED ON : 20.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3256 of 2021
and
C.M.P.No.18526 of 2021

National Insurance Company Limited,
PB No.72, Sreeji Complex,
Bedford, Coonoor – 643 101. .. Appellant/2nd Opposite Party

Vs.

1.M.Lakshmi .. 1st Respondent/Applicant

2.The Management,
Kundha Industrial Co-operative
Tea Factory Limited,
Edakkadu Post,
Nilgiris District. .. 2nd Respondent/1st Opposite Party

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Employees Compensation Act, 1923, against the award of the Commissioner for Employees Compensation, Coonoor dated 19.10.2020 made in E.C.No.34 of 2016.

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For Appellant : Mr.D.Bhaskaran

For Respondent : Mr.B.Rajagopal for R-1
No appearance for R-2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the order passed by the Commissioner for Employees Compensation, Coonoor in E.C.No.34 of 2016 dated 19.10.2020.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The brief facts leading to filing of this appeal are as follows:

The case of the applicant/workman is that, she sustained injury during her course of employment in the first respondent's factory. On 07.09.2014, at about 7.00 PM, when the applicant was engaging herself in the machine called C.T.C, used for grinding dried tea leaves, she met with an industrial accident during the course of her work and her right hand has been pulled inside by the conveyor belt and got struck. Thereby, she sustained severe

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injuries in the upper right arm. Immediately, she was admitted in the Government Hospital, Ooty by the first respondent Management and she was given first aid. For further treatment, she was admitted in the Ganga Hospital, Coimbatore on the same day. On 08.09.2014, she underwent major surgery in the right arm and subsequently, she was discharged on 13.09.2014. Thereafter, she was again admitted in the same hospital for further treatment on 18.09.2014 and discharged on 24.09.2014 and later, she was undergoing outpatient treatment. It is opined by the medical authorities that the movement of her right hand is restricted. Hence, she filed a claim petition under the Workmen Compensation Act before the Commissioner for Employee's Compensation, seeking compensation of Rs.3,73,497/- along with interest and penalty.

4. The first respondent management filed a counter stating that the claim petition is unsustainable since the accident was caused due to the negligence of the applicant and that they have made insurance arrangement with the second respondent/Insurance Company.

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5. The second respondent/Insurance Company contested the claim and filed a counter, disputing the manner in which the accident has taken place, age, income and disability of the claimant.

6. After considering the evidence placed on record, the Commissioner for Employees Compensation has held that the claimant has sustained injuries during the course of her employment and that the respondents are liable to pay compensation to the claimant under Employee's Compensation Act. The Commissioner has also quantified the compensation towards loss of income due to disability sustained by the claimant and awarded a sum of Rs.1,00,132/- to be paid by the first respondent management and a sum of Rs.1,12,127/- to be paid by the second respondent/Insurance Company along with 12% interest per annum from the date of accident till the date of realization, excluding the default period from 21.10.2019 till 18.11.2019.

7. Aggrieved over the same, the appellant/Insurance Company has preferred this appeal on the ground that even though the Insurance Company

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is liable to pay the compensation, they are not liable to pay interest on the compensation awarded and the interest has to be paid only by the employer.

8. It is the contention of the claimant that since there is an insurance policy coverage to pay the compensation, the Insurance Company is also liable to pay the interest.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. At the time of admission of the appeal, this Court based on the issues has admitted the appeal and framed the following substantial questions of law:

i) Whether the Commissioner for Employee's Compensation can make the insurer liable when there was no contract of insurance on interest?

ii) Whether the Commissioner for Employee's Compensation can go beyond the contract of insurance?

11. On perusal of the award of the Commissioner, it is seen that the Insurance Policy entered between the employer/first respondent and the

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Insurance Company/second respondent was marked as Ex.R1, wherein, there is a specific clause titled "Exclusions", which reads as follows:

> *"**Exclusions**: This policy shall not cover liability of the insured:*
>
> *d) For interest and / or penalty imposed on the insured under any law or otherwise.*
>
> *e) Under any Law for medical expenses in connection with treatment for any injury sustained by an Employee."*

Ex.R1 also shows that there is exclusion clause exempting the Insurance Company from paying the interest and/or penalty imposed on the insurer under any law or otherwise.

12. The Hon'ble Apex Court in ***New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya*** reported in ***(2006) 5 SCC 192***, after considering the scope of Workmen Compensation Act and Motor Vehicles Act, 1939, had considered the question as follows:

> *"The question posed for our consideration is required to be resolved in the light of the aforesaid statutory schemes of the two interacting Acts. It is not in dispute and cannot be disputed that the respondent Insurance Companies concerned will be*

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statutorily as well as contractually liable to make good the claims for compensation arising out of the employers' liability computed as per the provisions of the Compensation Act. The short question is whether the phrase 'liability arising under the Compensation Act' as employed by the proviso to sub-section (1) of Section 147 of the Motor Vehicles Act and as found in proviso to clause (i) of sub-section (1) of Section II of the insurance policy, would cover only the principal amount of compensation as computed by the Workmen's Commissioner under the Compensation Act and made payable by the insured employer or whether it could also include interest and penalty as imposed on the insured employer under contingencies contemplated by Sections 4-A(3)(a) and (b) of the Compensation Act."

Further, it is held as follows:

*"**18.** We are, in this case, not concerned with a case where an accident has occurred by use of a motor vehicle in respect whereof the contract of insurance would be governed by the provisions of the Motor Vehicles Act, 1988.*

***19.** As indicated hereinbefore, a contract of insurance is governed by the provisions of the Insurance Act. Unless the said contract is governed by the provisions of a statute, the parties are free to enter into a contract as for their own volition. The Act does not contain a provision like Section 147 of the Motor*

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Vehicles Act. Where a statute does not provide for a compulsory insurance or the extent thereof, it will bear repetition to state that the parties are free to choose their own terms of contract. In that view of the matter, contracting out, so far as reimbursement of amount of interest is concerned, in our opinion, is not prohibited by a statute.

20. *The views taken by us find support from a recent judgment of this Court in P.J. Narayan v. Union of India [(2006) 5 SCC 200 : 2004 ACJ 452 (SC)] wherein it was held: (SCC p. 200, para 1)*

> *"This writ petition is for the purposes of directing the insurance company to delete the clause in the insurance policy which provides that in cases of compensation under the Workmen's Compensation Act, 1923, the insurance company will not be liable to pay interest. We see no substance in the writ petition. There is no statutory liability on the insurance company. The statutory liability under the Workmen's Compensation Act is on the employer. An insurance is a matter of contract between the insurance company and the insured. It is always open to the insurance company to refuse to insure. Similarly, they are entitled to provide by contract that they will not take on liability for interest. In the absence of any statute to that effect, insurance companies cannot be forced by courts to take on liabilities which they do not want to take on. The writ petition is dismissed. No order as to costs.""*

13. The aforesaid judgment of the Apex Court was considered by this Court in ***Rahul @ Rahulkumar Vs. Sri Karvembu Textiles (P) Ltd and***

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another passed in ***C.M.A.No.2772 of 2019 dated 10.01.2020***, wherein, it is held as follows:

> *"8. Whether interest is liable to be paid by the insurance company or by the employer needs to be adjudicated, but, in the present case on hand, in the light of the judgment of the Hon'ble Supreme Court in New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya reported in 2006 (5) SCC 192, interest is payable by the employer. The relevant paragraph is extracted hereunder:*
>
> > *13. By reason of the provisions of the Act, an employer is not statutorily liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer, the insurer shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor Vehicles Act does not have a statutory liability. Section 17 of the Act does not provided for any restriction in the matter of contracting out by the employer vis-a-vis the insurer.*
>
> *9. Taking note of the exclusion clause, namely the interest on the entire compensation, will have to be borne only by the employer. In the light of the judgment of the Hon'ble Supreme Court in Saberabibi Yakubbhai Shaikh v. National Insurance Co. Ltd., reported in (2014) 2 SCC 298, interest is payable from the date of accident, on the entire amount determined by the authority."*

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14. In ***Smt.Kanaka Gowd and another Vs. M/s.P.R.Engineers and Contractor and another*** passed in ***C.M.A.No.1121 of 2016 dated 10.02.2021***, this Court has held in paragraphs 13 and 14 as follows:

"*13. Under these circumstances, straight jacket formula cannot be adopted by simply stating that the Insurance Company is no way connected with the workmen. The Insurance Company is within its knowledge that the compensation to be paid is for the benefit of the workmen. Thus, unlike other policies, wherein, the policy holder directly gets the benefits, here is the policy where the beneficiary is the workmen and the rights of the workmen are enunciated under the Workmen Compensation Act and therefore, the Insurance Company cannot shift its responsibility or state that they are no way connected with the Workmen Compensation Act or it is not a statutory contract.*

14. There is an implied implication to Workmen Compensation Act with reference to the policy issued under the Workmen Compensation policy. Such an implied implication or liability to be interpreted so as to ensure that the rights of the workmen are protected as the Workmen Compensation Act is a welfare legislation. While protecting the rights of the workmen, the liability of the Company and the employer is also to be

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decided. Undoubtedly, collecting the compensation from the Insurance Company may be an easy way, but, the Courts have to consider various other aspects and in the event of sustaining any monetary loss on the part of the Insurance Company, then the Courts are bound to grant liberty to the Insurance Company to sue the employer and to recover the loss if any caused to the Insurance Company. Contrarily, the Courts cannot deny the welfare benefits to the workmen as contemplated under the Workmen Compensation Act. The Workmen cannot made to suffer or cannot be driven out from pillar to post. The workmen is not a party to the contract. Therefore, there is no reason to penalise him or deny compensation, which is otherwise assured under the provisions of the Act."

15. This Court in ***M/s.Futura Generali India Insurance Company Limited Vs. K.M.Nagaraj and another*** passed in ***C.M.A.No.632 of 2021 dated 28.07.2022***, has followed the dictum of the Apex Court in *New India Assurance Co. Ltd.* cited supra and held that the Insurance Company cannot be made liable for paying interest to the claimants, unless there is a contract to that effect between the insurer and insured.

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16. Further, the Hon'ble Apex Court in ***P.J.Narayan Vs. Union of India and others*** reported in ***(2006) 5 SCC 200,*** has held that an insurance is a matter of contract between the insurance company and the insured and it is always open to the Insurance Company to refuse the insure. Similarly, they are entitled to provide by contract that they will not take on liability for interest.

17. Except the judgment of this Court in C.M.A.No.1121 of 2016, the other two judgments of this Court are based on the order passed by the Hon'ble Apex Court in ***New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya*** cited supra. Whereas, the order passed in C.M.A.No.1121 of 2016 has not referred about the judgment passed by the Hon'ble Apex Court cited supra. Hence, I am of the view that as per the order passed by the Apex Court in ***New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya*** and followed by the learned Single Judges of this Court in C.M.A.No.2772 of 2019 and C.M.A.No.632 of 2021 that if there is no contract of insurance to fix liability on the Insurance Company to pay interest for the compensation awarded to the insurer, the

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Insurance Company need not indemnify the employer. Admittedly, in this case, there is a specific exclusion clause, which states that this policy shall not cover the liability to pay interest or penalty imposed on the insurer under any law or otherwise.

18. The Commissioner, by relying on the judgment of the Hon'ble Apex Court in ***Oriental Insurance Co. Ltd. Vs. Siby George and others*** reported in ***2012 (3) LLN 510 (SC)***, has held that the Insurance Company is liable to pay interest. The said judgment is not applicable to the facts of the present case, since the Apex Court has considered the question whether the interest would be payable from the date of award of compensation, and by following the judgment of the Apex Court in ***Pratap Narain Singh Deo Vs. Srinivas Sabata and another*** reported in ***AIR 1976 SC 222,*** held that the payment of compensation falls due from the date on which the application is made and not from the date of order passed by the Commissioner. Hence, the judgment in *Siby George*'s case has been wrongly applied in this case. Accordingly, the questions of law framed are hereby answered in favour of the Insurance Company that the Insurance Company is not liable to pay interest on the compensation awarded, if there is an exclusion clause

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absolving the payment of interest for the compensation awarded by the Commissioner.

19. In the result, the Civil Miscellaneous Appeal is allowed and the award is modified to the effect that the interest shall be payable only by the first respondent/employer. The second respondent/Insurance Company is at liberty to withdraw the excess compensation, if any deposited. No costs. Consequently, connected miscellaneous petition stands closed.

20.06.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
Lm

To
1.The Commissioner for Employees Compensation,
Coonoor.

2.The Section Officer,
V.R. Section,
High Court, Chennai.

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K.RAJASEKAR,J.

Lm

Judgment made in
C.M.A.No.3256 of 2021

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