

SUPREME COURT OF INDIA

Kamla Chaturvedi

Vs.

National Insurance Co.

C.A.No.6691 of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

18.11.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Madhya Pradesh High Court, Jabalpur Bench, allowing the Misc. Appeal filed by the respondent No.1 (hereinafter referred to as the 'Insurance Company'). The controversy lies within a very narrow compass.

3. Challenge in the Misc. Appeal before the High Court was to the Award made by the Commissioner for Workmen's Compensation, Labour Court No.1 Gwalior (in short the 'Commissioner'). A sum of Rs.2,21,370/- along with interest at the rate of 12% per annum was awarded. The liability to make the payment was fixed on the Insurance company. In appeal the only ground raised was that in a claim arising under the *Workmen's Compensation Act, 1923* (in short the 'Act') interest is not payable by the Insurance company as there was no contract by the insurer with the insured with regard to the payment of interest. High Court accepted the stand placing reliance on a judgment of this Court in *New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya*¹. It was held that the direction for payment of interest by the insurance company was not sustainable and it was held that the insurance company was not liable to pay any interest and if so advised the amount of interest could be recovered by the claimant from the employer.

4. Learned counsel for the appellant submitted that the High Court has erroneously held that the Insurance company had no liability to pay. On the contrary learned counsel for the Insurance company has submitted that the decision in *New India Assurance Co. Ltd.*'s case (supra) has a clear application to the facts of the case.

5. In *New India Assurance Co.*'s case (supra) this Court found as a matter of fact that a contract itself provided that the interest and/or penalty imposed on the insurer on account of

his/her failure to make payment of amount payable under the Act is not to be paid by the insurer. This position is clear from the paragraphs 3&4 of the judgment which read as follows:

"3. The two claim petitions came to be filed by the heirs and legal representatives of the deceased driver and the cleaner under the Compensation Act before the Commissioner for Workmen's Compensation, Rajgarh District, Sirmur, Himachal Pradesh. The said applications were moved presumably by exercising option available under Section 167 of the Motor Vehicles Act which lays down that:

"167. Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to any person gives rise to a claim for compensation under this Act and also under the *Workmen's Compensation Act, 1923*, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."

6. Thus these two applications were in substitution and in place of otherwise legally permissible claims before the Motor Accidents Claims Tribunal functioning under the Motor Vehicles Act. In the said claim applications, the claimants joined the appellant-employer as well as Respondent 9-insurance company as respondents. The Workmen's Commissioner after hearing the parties concerned computed the compensation available to the claimant-dependants of the deceased employees. So far as the claim put forward by the heirs of the deceased driver was concerned the Commissioner awarded a sum of Rs.88,968 as compensation. But as the compensation due was not paid either by the appellant-employer or by the insurance company as and when it fell due the Commissioner awarded a penalty of Rs. 41,984 with interest at the rate of 6% per annum from the date of the accident till the date of payment under Section 4-A(3) (a) and (b) of the Compensation Act. The entire amount of Rs.88,968 with penalty of Rs.41,984 and interest thereon was held payable by the insurance company to the claimants jointly and severally with the appellant-employer. The said amount was made payable by Respondent 9-insurance company on the basis that the insurance company had insured the appellant against his liability to meet the claims for compensation for the death of employees dying in harness giving rise to proceedings against the insured employer under the Compensation Act. Similarly the Commissioner awarded a sum of Rs.88,548 to the claimants being legal representatives of the deceased cleaner. In addition to the said amount, penalty of Rs. 44,274 with interest from the date of the accident till the date of payment was also made payable by Respondent 9- insurance company.

"4. The claimants were satisfied with the said awards. Similarly the appellant-owner was also satisfied with the said awards. However, the insurance company carried the matter in appeals before the High Court and contended that the insurance company would be liable under the contract of insurance only to make good the claims for compensation so far as the principal amounts were concerned. But it could not have been made liable to pay the amounts of penalties with interest thereon as ordered by

the Workmen's Commissioner as these amounts of penal nature were awarded against the insured owner on account of his personal default as per Section 4-A(3) of the Compensation Act and for such default on the part of the insured the insurance company was not liable to reimburse the insured. As noted earlier, the said contention of Respondent 9-insurance company appealed to the High Court. The appeals were allowed and the awards of the Commissioner under the Compensation Act insofar as they fastened the liability to pay the penalty and interest on the insurance company were set aside. The amounts deposited in excess by the insurance company were ordered to be refunded to it while the remaining amounts were ordered to be paid to the claimants. It was, however, clarified that the claimants shall be at liberty to recover the amount of penalty and interest in accordance with law from the employer, appellant herein."

6. In *Ved Prakash Garg v. Premi Devi and others*¹ this court observed that the Insurance Company is liable to pay not only the principal amount of compensation payable by the insurer employer but also interest thereon if ordered by the Commissioner to be paid by the insured, employee. Insurance company is liable to meet claim for compensation along with interest as imposed on insurer employer by the Act on conjoint operation of Section 3 and 4(A)(3)(a) of the Act. It was, however, held that it was the liability of the insured employer alone in respect of additional amount of compensation by way of penalty under Section 4(A)(3)(b) of the Act. In *New India Assurance Co.'s case* (supra) and *Ved Prakash Garg's case* (supra) was distinguished on facts. It was observed that in the said case the court was not concerned with a case where an accident had occurred by use of motor vehicle in respect whereof the Contract of Insurance will be governed by the provisions of the *Motor Vehicles Act, 1988* (in short the 'M.V. Act'). A contract of Insurance is governed by the provisions of the *Insurance Act, 1938* (in short 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 per their own volition. The Act does not contain a provision like Section 148 of the MV Act where a statute does not provide for a compulsory insurance or accident thereof. The parties are free to choose their terms of contract. In that view of the matter contracting out so far as the reimbursement of amount of interest is concerned is not prohibited by a statute. This position have been reiterated in *P.J. Narayan v. Union of India and others* [2006 (5) SCC 200]. In the instant case the position is different. The accident in question arose on account of vehicular accident and provisions of MV Act are clearly applicable. We have gone through the policy of insurance and we find that no such exception as was the case in *New India Assurance Co.'s case* was stipulated in the policy of insurance. Therefore, the Insurance Company is liable to pay the interest.

7. The further question arises as to from which date it would be paid.

8. In *National Insurance co. Ltd. v. Mubasir Ahmed & Anr.*² it was, inter alia, held as follows:

"Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The

question of liability under Section 4-A was dealt with by this Court in *Maghar Singh v. Jashwant Singh* [(1998) 9 SCC 134]. By amending Act 30 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A(1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise.

9. In view of what has been stated in *Mubasir Ahmed's* case (*supra*) the liability for interest would be in terms of what has been stated in paragraph 9 of the judgment.

10. The appeal is allowed to the aforesaid extent. There shall be no order as to costs.

¹[1997(8) SCC 1]

²[2007(2) SCC 349]