(2001) 02 DEL CK 0154

In the Delhi High Court

Case No : LPA 44 of 1989

Competent Construction Co. APPELLANT

Vs

The Oriental Insurance Co. and others RESPONDENT

Date of Decision : 05-02-2001

Acts Referred:

Citation : (2002) 1 ACC 437 : (2002) ACJ 437 : (2001) 90 FLR 59 : (2001) 1 LLJ 1545

Hon'ble Judges : M.S.A. Siddiqui, J;B.A. Khan, J

Bench : Division Bench

Advocate : V.P. Chaudhary and Ms. Saroj Bidawat, for the Appellant; D.R. Mahajan, for the Respondent

Judgement

Khan, J.—Abdul Kalam (24), a loader on appellant''s truck No. DLG -3809 died when the truck over-turned on 21.5.1985. Respondents 2 to 6 (claimants) filed a claim petition before the Commissioner under the Workmen''s Compensation Act who awarded them a compensation of Rs.87,388/- vide Award dated 4.8.1986. He also found that Management had failed to deposit the entire amount within prescribed time without any justification and accordingly, awarded penalty of Rs.25,000/- and interest of 6% p.a. on the whole amount from dates which are not material for our purposes.

2. Insurance Company felt aggrieved of this and filed FAO 171/86 which was disposed of by first Appellate Court vide a lucid judgment dated 1.3.1989 interpreting relevant Provisions of WCA and also MVA holding that the word, "liability" occurring in Section 95 of MVA only embodied a normal compensation in the context of WCA and did not include special interest and penalty awarded u/s 4-A(3) of WCA. The court accordingly quashed the Commissioner''s order and absolved the Insurance Company, (respondent No.2) of its liability to pay penalty and interest for the Insured.

3. Appellant, (owner) has filed this appeal to challenge the impugned judgment on the ground that the liability of the Insurance Company should be deemed to

include interest, penalty and costs also.

4. The point in issue stands blissfully settled by judgment of the Supreme Court in Ved Prakash Garg Vs. Premi Devi and others, which rules as under:

".....The insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen''s Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4A sub-section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen''s Commissioner u/s 4A(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.

5. A perusal of the judgment shows that the controversy stands settled only as regards the interest and penalty but not the costs. In the present case, though the costs imposed by way of counsel fee are negligible, it would still have to be examined whether these could be treated as a part of the statutory liability to be discharged under WCA and MVA. Learned counsel for appellant, Mr.Chaudhary invited our attention in this regard to the provisions of Section 96 of MV Act, 1939 which provides an answer. The relevant provision reads thus:-

"96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks.-(1) If, after a certificate of insurance has been issued under sub-section (4) of section 95 in favor of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

6. It would be seen that Section 96 regulates the liability of the Insurer and casts an obligation on the company to discharge such liability together with any amount payable by way of costs and interest. Therefore, if Insurance Company was liable to pay interest on the principal amount of compensation, it was equally liable to make good the costs imposed on the insured under the mandate of Section 96 which per se treated these as a part of the principal legal liability.

7. We accordingly hold that u/s 96, an Insurer was under an obligation not only to satisfy the award of Principal amount of compensation but also interest on the amount Along with costs, if any imposed by the Commissioner under WCA or Tribunal under MVA.

8. Viewed thus the Commissioner''s award would have to be satisfied both by Appellant and Respondent Insurance Company. The penalty amount would have to be borne by the appellant and the remaining amount for interest and costs by the Insurance Company.

9. This appeal is accordingly allowed to that extent and the impugned judgment of the First Appellate court dated 1.3.1989 set aside.

