
(2010) 08 MP CK 0021
In the Madhya Pradesh High Court
Case No : M.A. No. 655 of 2009

Dheeraj Kumar

APPELLANT

Vs

Anreja Road Lines and Another

RESPONDENT

Date of Decision : 20-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1)
Workmens Compensation Act, 1923 — Section 4A(3)

Citation : (2011) ACJ 1757

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—Being aggrieved by the order dated 20.11.2008 passed by Commissioner for Workmen's Compensation, Labour Court, Indore, Case No. 96 of 2006 W.C. Non-Fatal whereby the claim case filed by the appellant for compensation on account of injuries in a motor accident was allowed and compensation of Rs. 3,06,432 along with interest at the rate of 12 per cent per annum was awarded w.e.f. 7.8.2006 but so far as payment of interest is concerned, respondent No. 2 was exonerated, the present appeal has been filed.

2. Mr. Manish Jain, learned counsel for the appellant, argued at length and submits that the learned Commissioner committed error in not directing the respondent No. 2 to pay the interest while offending vehicle was duly insured. It is submitted that no reason has been assigned by learned Commissioner for not awarding interest from the respondent No. 2. The learned counsel placed reliance on a decision in the matter of Oriental Insurance Co. Ltd. Vs. Heerabai and Others, wherein while dealing with section 4-A(3)(a) of Workmen's Compensation Act, 1923 and section 147(1) of Motor Vehicles Act, 1988, this court held that no evidence adduced by insurance company to the effect that it is not liable for payment of interest as per policy and there is clause in the policy to the same effect, insurance company is liable for payment of interest. It is submitted that in the facts and circumstances of the case, there was no justification on the part of learned Commissioner in not directing the respondent

No. 2 to pay the interest on the awarded amount.

3. Learned counsel for the respondent No. 2 submits that no illegality has been committed by learned Commissioner in not awarding interest. It is submitted that since there was no contract between the parties for payment of interest, therefore, learned Commissioner has rightly exonerated the respondent No. 2 from payment of interest. The learned counsel placed reliance on a decision in the matter of New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, wherein Hon''ble Apex Court has held that 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 of their own volition. The Act does not contain a provision like section 147 of the Motor Vehicles Act. Where a statute does not provide for a compulsory insurance or the extent thereof, it will bear repetition to state, 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. It is submitted that in the facts and circumstances of the case the learned Commissioner committed no error in exonerating respondent No. 2 from payment of interest. It is submitted that appeal filed by the appellant be dismissed.

4. From perusal of record, it is evident that no evidence was adduced by the respondent No. 2 to the effect that respondent No. 2 entered into contract which took place between the parties regarding payment of interest on the awarded amount. In the facts and circumstances of the case, it appears that learned Commissioner committed error in exonerating the respondent No. 2 from payment of interest. In view of this, appeal filed by the appellant is allowed and the impugned order, so far as it relates to exoneration of respondent No. 2 from payment of interest is concerned, is set aside with a direction to respondent No. 2 to pay the interest on the awarded amount to the appellant.

5. With the aforesaid observations, appeal stands disposed of. C.C. as per rules.