(1996) 08 AP CK 0060

In the Andhra Pradesh High Court

Case No : A.A.O. No. 1286 of 1989

Divisional Manager, Oriental Insurance Company Ltd. APPELLANT

Vs

Zarina Bee and Another RESPONDENT

Date of Decision : 22-08-1996

Acts Referred:
Workmens Compensation Act, 1923 — Section 4

Citation : (1997) 1 ACC 460 : (1997) ACJ 1415 : (1996) 4 ALT 1088 : (1997) 2 LLJ 1133

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant;

Judgement

1. The appellant, who is the insurer of the vehicle involved in a motor vehicle accident on August 5, 1987 causing death of a workman, Fakruddin alias Fakruddin E. Munnawala, having suffered an award of Commissioner for Workmen''s Compensation u/s 4A of the Workmen''s Compensation Act (for short ''the Act'') and also the order of penalty and interest u/s 4A of the Act has challenged it. The even date of such an award u/s 4A of the Act is July 1, 1989. Uncontrovertedly, the directions issued by the learned Commissioner in his order dated February 7, 1989 to deposit the compensation amount of Rs. 81, 806-40ps. were not deposited actually within the stipulated time and consequently, the Commissioner passed the order in the form of directions u/s 4A of the Act. When the notices were served on the parties including the appellant, it was resisted by the appellant, however, coming with certain explanations. Having heard both the sides, the learned Commissioner overruled the objections of the appellant and did not accept the justifiable reasons according to them for not depositing the amount and at the same time held that the appellant and other parties are jointly and severally liable to pay the 50% penalty and 6% interest over the amount already directed to be deposited under the Act and that is challenged by the appellant.

2. Mr. Subba Rao, the learned Advocate for the appellant has raised two contentions viz.,

(1) the appellant being the insurer of the vehicle involved in the accident cannot be brought within the meaning of ''employer'' u/s 4A of the Act and therefore no liability at all at the inception can be placed on the insurer in the absence of any specific provision in the Act much less in the absence of any stipulation in the Insurance Policy.

(2) Even assuming that for any reason, the initial liability of the insurer is established to indemnify the employer in a given case to pay the compensation, no penalty or interest can be awarded on the insurer for non-compliance of the directions in the award invoking the powers of the Commissioner u/s 4A of the Act. The learned Advocate has drawn the attention of this Court to Sections 13 and 14 of the Act and has depended upon the precedents in support of his contention which are-Odental Fire & General Insurance Co. Ltd. v. Matias Buria 1986 ACJ 732; Oriental Insurance Co. Ltd. v. Jeevaramma (1994 III LLJ 1036) ; National Insurance Co. Ltd. Vs. Mohd. Mujataba Khan and Another, ; United India Fire and General Insurance Co. Ltd. v. Vadivatha 1982 ACJ 75; Sampuran Singh v. Kubrabi 1986 ACJ 183; G. Sreedharan v. H. I Insurance Corporation Ltd. 1976 LLC 732.

3. The only question which appears to be on law arising in this case is whether the Insurance Company or the insurer is liable to pay the penalty or interest u/s 4A of the Act for not complying with the directions of the award within the stipulated time. The law appears to be settled in this regard. In view of Section 14 of the Act wherein the liability of the insurer comes into play only when the employer becomes insolvent and not otherwise. Section 4A of the Act itself spells out the liability for the consequence of non-compliance of the award made as against the employer. The implication of either Section 4A or Section 14 of the Act cannot rope in the insurer to absolute liability at all events. Our own High Court in G. Seeranaran''s case (supra) held that the Insurance Company is not liable in a case arising under the Act. But, therein, the question of penalty and interest u/s 4A did not arise for consideration. In National Insurance Cot Wany''s case (supra) the question arose straight before our Court wherein it was held that an insurance Company cannot he fastened with the liability u/s 4A of the Act. There is also an unreported decision in CMA No. 338 of 1988 dated September 6, 1988. Similar view has been taken by various High Courts even to a larger extent.

4. The High Court of Madras took an extreme view that there is no liability of the insurer to pay the compensation under the provisions of Workmen''s Compensation Act. But, the High Court of Karnataka adopted a logical view that, unless the risk is covered under the Insurance Policy, there cannot he any ability on the part of insurer and unless the terms of the policy specifically says that Section 4A of the Act cannot be imposed on the insurer. The question whether the insurer is totally beyond the pale of liability to answer the claim under the

provisions u/s 4A (sic 4A) of the Act does not arise in this case.

5. The Insurance Company as an insurer is the creature of both the statute and also a contract in view of the Insurance Act and also the Contract Act. The Insurance Policy is strictly a contract within the meaning of Section 2 of the Contract Act, however, subject to the statutory implications of the Insurance Act. Therefore, its rights and liabilities are governed by not only the terms of the contract of insurance and also limitations and the control of Statute. Therefore, unless there is a provision like Section 95 or 96 in the Act and in view of the specific provisions under Sections 13 and 14 of the Act, the liability of the Insurance Company to indemnify the owner or the insured cannot be presumed. That will be a matter to be tested in each case depending upon the facts and circumstances and the specific law operating upon that.

6. Mr. Subba Rao, the learned Counsel fairly conceded that, in view of the stipulated terms of the policy to indemnify the owner regarding the compensation to be paid by him, the Insurance Company did not challenge the award as a whole but has confined itself in regard to the liability to pay the penalty and interest. Such contention of the insurer in this case has all the force. The learned Commissioner under the Act has not considered this aspect of the matter in the true legal perspective but fastened the liability without any reason. The grievance of the learned Counsel is that even the explanation given by the insurer by filing the counter as to why the amount of compensation was not deposited within the stipulated time was not considered. At any rate, part of the award in question imposing penalty on the appellant cannot be sustained.

7. The appeal is allowed and the order of the learned Commissioner in appeal is set aside. No. costs.