

(1996) 08 KAR CK 0002

In the Karnataka High Court

Case No : M.F.A. No's. 434, 2633, 2726 and 3528 of 1995

M/s United India Insurance Co. Ltd.

APPELLANT

Vs

Gangawwa and others

RESPONDENT

Date of Decision : 29-08-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 147 (1)

Workmens Compensation Act, 1923 — Section 4 A (3)

Citation : (1998) 1 ACC 257 : (1997) ACJ 825 : AIR 1997 Kar 168 : (1997) 2 LLJ 523

Hon'ble Judges : S. Venkataraman, J

Bench : Single Bench

Advocate : A.N. Krishnaswamy, B.C. Seetharama Rao, O. Mahesh and S.V. Narasimhan, for the Appellant; Subhas B.Adi, R.B. Deshpande, G. Balakrishna Shastry and Suresh S.N., for the Respondent

Judgement

1. The short point that arises in these appeals, filed by the insurer, is whether the insurer who has issued a policy under the Motor Vehicles Act can be made liable to pay the interest awarded by the Commissioner for Workmen's Compensation u/s 4-A(3) of the Workmen's Compensation Act (hereinafter referred to as "the Act").

2. It is contended on behalf of the insurers, who are the appellants in these appeals, that u/s 147(1) of the Motor Vehicles Act, 1988, which is similar to Section 95(1) of M. V. Act, 1939, in respect of employees of insured travelling in the vehicle they are required to cover only the liability to pay compensation payable under the Act, that u/s 4-A(3) of the Act apart from the compensation payable, the Commissioner can award interest if the employer commits default in paying the compensation due under the Act within one month from the date it fell due, that the award of interest is by way of penalty, that this interest is payable only by the employer and that as it does not form part of the compensation, there is no statutory liability on the part of the insurer to pay such interest. It is pointed out that compensation has to be paid within one

month from the date of the accident and it is only if it is not paid within that period the interest can be levied, that the insurer may not know about the accident at all and as such the insurer cannot be made liable for interest. The Learned Counsel for the appellants have sought sustenance for the arguments from the following decisions :

1. Oriental Insurance Co. Ltd. v. Hasmat Ioiatoon and Others 1989 (58) FLR 897 (Del.);
2. Oriental Fire and Genl. Ins. Co. Ltd. v. Matias BurLa and Another 1986 ACJ 732 (Ori.);
3. Oriental Insurance Co. Ltd. v. Jevaramma and Others 1988 (57) FLR 783 (Kar.).
4. Smt. Shanthamma and others Vs. Smt. Kamalamma and another, .

It is not disputed that Section 147(1) of M.V. Act.1988 (Section 95 of the 1939 Act) makes it obligatory for the insurer to cover the liability under the Workmen's Compensation Act in respect of death of or bodily injury to an employee arising out and in the course of his employment under the insured. The liability of the insurer under this provision is no doubt with regard to the compensation awardable under the so provisions of the Act.

3. Section 4 of the Act prescribes the amount of compensation payable in the case of death or bodily injury to an employee arising out and in the course of his employment. Section 4-A(1) s stipulates that compensation u/s 4 shall be paid as soon as it falls due. In case the employer disputes the liability for compensation to the extent claimed by the employee, Section 4-A(2) requires him to make provisional of payment of the amount admitted by him. Section 4-A(3) contains a provision for awarding interest and penalty and it reads as hereunder :

"4-A(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty percent of such amount, shall be recovered from the employer by way of penalty."

4. The above provision shows that the Commissioner, after holding that the employer is liable to pay the compensation, can award interest, if the employer has not deposited the compensation within the stipulated time and that he can also award a further sum not exceeding 50% of the compensation if there was no justification for the employer delaying the payment, as a penalty. It is worthwhile to note that even if the employer had justification for not paying the compensation within the prescribed time the Commissioner has power to award interest once he finds that the compensation has not been paid in the stipulated

time. But to award the additional sum not exceeding 50% the Commissioner has to be satisfied that there was no justification for the delay in payment.

5. The question whether the insurer is liable to indemnify the insured even with regard to the amount awarded as penalty under the second part of sub-section (3) of Section 4-A is no longer *res integra*. In *Smt. Shanthamma and others Vs. Smt. Kamalamma and another*, a Division Bench of this Court has held that the 1524 insurance company is liable to meet only the compensation payable for the risk covered and not the penalty unless the terms of the policy specifically include payment of penalty also and that penalty is not a necessary part of compensation. It is pointed out that compensation is pecuniary damages payable in respect of the damage or injury caused including death whereas penalty of material reparation payable for breach of duty to pay the compensation within the statutory period prescribed under the Act.

In *Shanthamma v. Kamalamma* (*supra*), it is held that amount of compensation due under the Workmen's Compensation Act is one thing and is the amount recoverable in default of non-payment of that compensation as penalty is altogether different. It is further held that the words "liability" used with reference to the Workmen's Compensation Act in Section 95 of the Motor Vehicles Act, 1939, excludes from it the sum not exceeding 50% which could be recovered by the Commissioner from the employer for default in payment of compensation payable under the Act by way of penalty provided for under sub-section (3) of Section 4-A of the Act.

6. The main contention of the Learned Counsel for the appellants is that even the award of interest under the first part of sub-section (3) of Section 4-A is by way of penalty and as such in view of the above rulings interest cannot form part of the compensation and the insurer cannot be made liable to pay interest.

In *Oriental Fire and General Insurance Co. Ltd. v. Matiyas Burla*, (*supra*), the Orissa High Court has held as hereunder :

"A bare glance at Section 4-A(3) is enough to show that it can be invoked against an employer. The use of the word, "employer" in this provision as distinct from the phrase any person" in Section 31 of the Act, which deals with recovery of compensation, also further confirms the view that the provisions can be invoked against an employer. Being a penal provision, it is to be invoked against an employer. Being a penal provision, it is to be construed rigidly. The insurer, who takes the liability to indemnify the employer is not the (sic.) employer. On this short ground only, the contention of Mr. Basu that the interest claimed and penalty imposed on the insurer is unauthorised, becomes unassailable".

In *Oriental Insurance Co. Ltd. v. Hasratoon* (*supra*), the Delhi High Court has laid stress on the use of the word "liability" in Section 95 of M. V. Act 1939, and had held that liability must be taken to mean only normal compensation and not to include special interest and penalty awarded u/s 4-A(3) of the Act.

The expression "by way of penalty" found in sub-section (3) of Section 4-A must be taken to refer only to the additional amount not exceeding 50% which can be awarded when the employer has failed to pay or deposit the compensation in time.

There may be many cases where the employer has justification for the delay in paying the compensation. Even in such cases the Commissioner can award interest on the amount which if found due, not because the conduct of the employer requires to be penalised, but because the claimant had been deprived of the amount due to him and to compensate him for that. A Division Bench of this Court in *N.A.K. Pathan v. Julekhab Pathan* 1987 (70) FJR 40 (Kar.), has highlighted the distinction between the two parts of Section 4-A(3) as hereunder :

"Section 4-A(3) is in two parts. The first part which contemplates the levy of interest provides that where any employer is in default in paying the compensation due under the Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent per annum shall be recovered."

7. The condition on the happening of which liability for interest gets attracted is merely that the employer is in default in paying, the compensation within one month on the date it fell due. The considerations relevant to the levy of interest do not include any circumstances subjective to the employer. The conditions are purely objective. The provision is compensatory and not strictly penal. Under the "Act" the employer becomes liable to pay the compensation as soon as the injury to or death of the workman, as the case may be, is caused. Section 19 only provides for settlement by the Commissioner of any question regarding liability of any person to pay compensation or the amount of compensation. The Section does not have the effect of suspending the liability of an employer to pay compensation till after the settlement contemplated u/s 19. It is the duty of employer to pay compensation u/s 4-A(1) as soon as the death is caused. Where the employer fails to do so, the employer is liable to pay interest.

"... .."

Second part of Section 4-A(3) deals with levy of penalty, which becomes impossible if in the opinion of the Commissioner there is no just cause for the delay, in paying the amount. The question of justification for the delay or the absence of it depend, at least partially, on factors subjective to the employer and will have to be decided after considering his case and his explanation.

An order imposing penalty for failure to carry out a statutory obligation, it is true, is in the nature of the quasi-criminal proceeding, and penalty may not be imposed unless the party obliged has either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. It is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances.

8. Thus it is clear that award of interest is only compensatory in nature and not a penalty. The principle on which this Court has held that insurer cannot be made liable for the penalty levied under the second part of Section 4A(3) 50 cannot be extended to the levy of interest which is only compensatory. Party who was liable to pay the compensation at a particular time would have had &c benefit of retaining that amount from the time it became due and the party who s was entitled to it by a particular date would have been deprived of that amount and it is for that reason the party liable to pay the amount will have to pay interest as compensation. The insurer became liable to pay the compensation the moment the liability of the insured arose. The question whether the insurer was aware of the accident or not is not that relevant. The insurer would have had the benefit of retaining that amount from the date its liability arose till actual is payment. As such the insurer who virtually steps into the shoes of the employer for the purpose of paying the compensation to the workman must also be liable to pay the interest. In this connection a reference may be made to a 2o Division Bench ruling of this Court in United India Insurance Co. Ltd. Vs. Kashimsab and others, . In that case a question arose as to whether the insurer is liable to deposit the compensation before filing an appeal as stipulated in 25 the third proviso to sub-section (1) of Section 30. A contention was raised that the third proviso contemplates a deposit being made by an employer and not by the insurer, as the insurer cannot be equated with an employer. This 30 Court, taking into consideration the provisions of the Act and several decisions, has noted that the insurer steps into the shoes of the employer or the owner of the vehicle and has held that the insurer must deposit the compensation before 35 filing the appeal. As such the contention that because sub-section (3) of Section 4-A refers to an "employer" the insurer cannot be made liable to pay the interest is untenable.

9. The two decisions of the Delhi High Court and Orissa High Court relied on by the Learned Counsel for the appellants proceed on the basis that even levy of interest is by way of penalty, which runs counter to the ruling of this Court 4,5 and cannot therefore be accepted.

The liability of the insurer to pay even the interest is clearly spelt out in Section 149(1) of the Motor Vehicles Act, 1988 (Section 96(1) of the 50 Act), which reads as hereunder :

"149. Duty of insurers to satisfy judgments and awards, against persons insured in respect of third party risk -(1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of sub-section (1) of Section 147 (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 thereunder, 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."

10. The above provision clearly shows that if any interest can be awarded at the time of judgment in pursuance of any enactment then the insurer is liable to pay that interest also. Section 171 of the Motor Vehicles Act, 1988 (Section 30 1 10-CC of the 1939 Act) gives a discretion to the Tribunal while allowing a claim for compensation to award interest at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. The 35 Learned Counsel for the insurer do not dispute that the insurer is liable to pay the interest awarded by the Tribunal in exercise of its power u/s 171. Section 167 of the Motor Vehicles Act provides that where the death or bodily injury to any person gives rise to a claim for compensation under the Motor Vehicles Act and also under the Workmen's Compensation Act then the person entitled to compensation may claim such compensation under either of those Acts but not under both. Thus an option is given to the claimant either to seek compensation under the M. V. Act or under the Workmen's Compensation Act. It would be anomalous to hold that while the insurer would be liable to pay the interest awarded by the Tribunal in case the claimant prefers the claim before the Tribunal, the insurer would not be liable to pay the interest payable under the Workmen's Compensation Act. The interest awarded by the Commissioner u/s 4-A(3) is interest awarded in pursuance of an enactment at the time of the final order. It is now well-settled that the use of the word "decree" in Section 149(1) does not necessarily mean that the provision is applicable only in a civil suit and that it is applicable to other proceedings under the Statute. u/s 149(1) there is a statutory liability on the part of the insurer even to pay the interest which is awarded in pursuance of any enactment and even the parties cannot contract out of this liability. The Learned Counsel for the appellants were not able to state as to how the insurer can avoid its liability to pay interest in view of specific provision in Section 149(1). In the two decisions relied on by the counsel for the appellants no reference has been made to Section 149(1) or Section 96(1) of the 1939 Act. The contention raised by the appellant-insurers in these appeals that they cannot be made liable for the interest awarded u/s 4-A(3) of the Act is untenable and cannot be accepted.

11. For the above reasons these appeals are dismissed with costs. Advocate's fee Rs. 500/- in each case.