
(1996) 09 KL CK 0068
In the High Court Of Kerala
Case No : M.F.A. No. 684/95 B

National Insurance Co. Ltd.

APPELLANT

Vs

Unni and Others

RESPONDENT

Date of Decision : 13-09-1996

Acts Referred:

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

Citation : (1996) 09 KL CK 0068

Hon'ble Judges : K.K. Usha, J;G. Sivarajan, J

Bench : Division Bench

Advocate : Rajan P. Kaliath, for the Appellant; P.V. George and Raji George and Leelamma Abraham, for the Respondent

Final Decision : Allowed

Judgement

G. Sivarajan, J.—The National Insurance Company Limited, Matancherry branch, the second opposite party in W.C.C. 114 of 1991 before the Workmen's Compensation Court is the Appellant. Parents of deceased Ambika, a worker in Anjana Match Factory owned by the first opposite party has filed the claim petition. They are Respondents 1 and 2 in the appeal. The first opposite party, the Proprietor of Anjana Match Factory is the 3rd Respondent in the appeal.

2. The first and second Respondents, who are the parents of deceased Ambika filed the claim petition alleging that their daughter Ambika was a worker in Anjana Match Factory belonging to the 3rd Respondent and that on 11th September 1991 while handling timbers in the course of work, the timber slipped from the hands of another worker and fell on the head of Ambika, which resulted in her death on the very same day. It was also averred that the deceased worker was getting a monthly wages of Rs. 450 and that she was aged 23 at the time of death. Respondents 1 and 2 claimed a total compensation of Rs. 52,432 towards compensation. The third Respondent, who is the proprietor of the Anjana Match Factory admitted the above allegations and stated that the Match Factory is duly insured under Workmen's Compensation Act with the Appellant and that there

was a valid at the material point of time. It was also stated that he had preferred the claim with the insurance company immediately after the accident. The Appellant also filed a written statement admitting the insurance policy, but contended that the deceased was not covered by the said policy. The Appellant also disputed the wages and the age of the deceased. The Commissioner for Workmen's Compensation Court after considering the evidence let in by the parties held that the deceased Ambika was a worker of Anjana Match Factory and that she sustained personal injury while at work on 11th September 1991, which resulted in her death. The Commissioner also found that Respondents 1 and 2 are entitled to get compensation of Rs. 41,334 with simple interest at the rate of 6 per cent from 11th September 1991 (the date of death of the deceased). The Commissioner also considered the contentions regarding the liability of the Appellant company and found that there is a valid insurance policy in respect of Anjana Match Factory covering the risk of the deceased also and therefore the Appellant company is liable to identify the 3rd Respondent. The insurance company was therefore directed to pay a sum of Rs. 41,334 to Respondents 1 and 2 with simple interest at the rate of 6 per cent from 11th September 1991 within 30 days from the date of receipt of the gist of this order. It is against the direction to the Appellant to pay interest on the compensation amount that the Appellant has come up in appeal.

3. Learned Counsel appearing for the Appellant contended that the liability of the Appellant company u/s 4A(3) of the Workmen's Compensation Act, 1923 is only to pay the admitted amount, that there was dispute regarding the wages and the age of the deceased and that the Appellant did not admit any amount. Learned Counsel further submitted that the Appellant had deposited the compensation amount soon after the liability was determined. Learned Counsel also pointed out that the liability of the Appellant arises only under the contract of insurance and that the policy issued to the 3rd Respondent evidenced by Ext. O.P. II-I specifically excludes the liability in respect of penalty and interest. Learned Counsel therefore submitted that the Commissioner seriously erred in directing the Appellant to pay interest on the compensation amount. Learned Counsel also pointed out that there was no claim for interest in the claim petition, that the claimants had preferred the said claim only by way of a petition filed on 8th October 1993 claiming 50 per cent of the amount of compensation as penalty and 6 per cent interest in addition to the penalty. The Appellant company filed objection to the said petition on 13th October 1993 denying the liability on the part of the Appellant to pay interest on the compensation amount. It was also pointed out that the Appellant company was impleaded as a party in the claim petition only after 17 months of the institution of the said claim. The Appellant also pointed out that Ext. O.P. II-I, a copy of the insurance policy produced by the Appellant clearly showed that the liability of the company is to pay compensation under the Workmen's Compensation Act, 1923 and subsequent amendments of the said Act prior to the date of issue of the policy provided that the insurance granted hereunder is not extended to include (i) any interest

comply with the requirements laid under "the Workmen's Compensation Act, 1923 and (ii) any compensation payable on account of occupational diseases in Part C of the Workmen's Compensation Act, 1923". This is found type written in the first page of the policy itself. Besides such a stipulation is also contained in the enclosure to the said policy. It is on this basis that the Appellant submits that it is not liable to pay interest on the compensation amount. On the other hand, learned Counsel for the 3rd Respondent submitted that the Appellant company is liable to pay interest on the compensation amount also and that there was no justification on the part of the Appellant company to deny the same. It is also submitted that the 3rd Respondent preferred the claim immediately after the accident and that there was a statutory duty on the part of the Appellant to deposit the compensation amount immediately. It is further stated that it is only because of the inaction or delay on the part of the company that the liability to pay interest has arisen and therefore the Appellant alone is liable to pay the interest on the compensation amount. Learned Counsel appearing for the claimants also raised contentions similar to the one raised by the 3rd Respondent.

4. We have considered the rival submissions. We find merit in the submissions made on behalf of the Appellant. In the application for compensation, there was no claim for interest on the compensation amount. The said claim was made for the first time in the petition filed by the claimants on 8th October 1993. The Appellant filed objections denying their liability to pay the interest on the compensation amount. It is relevant to note that the 3rd Respondent proprietor of the Match Factory, whose liability is covered by the insurance policy has not filed any objection to the claim made in the petition. The insurance policy Ext. OP. II-I produced by the Appellant company, as already noted, clearly excludes the liability to pay interest on the compensation amount. It is clearly stated in the policy that the liability of the insurance company is only for the liability under the Workmen's Compensation Act, which will not include the liability to pay interest on the compensation amount. The liability undertaken by the insurance company to indemnify the insured being a contractual liability the parties are bound by the contract and the insurance company is liable to identify the insured only to the extent of the liability undertaken by them. In the instant case, the insurance company, as could be seen from Ext; O.P. II-I has not undertaken the liability to pay interest on the compensation amount. In such circumstances, we are of the opinion that the Commissioner for Workmen's Compensation Court was not justified in directing the insurance company to pay interest on the compensation amount awarded. We hold that the insurance company is liable to pay only the amount of compensation awarded by the Commissioner for Workmen's Compensation Court and not for the interest payable on the said amount.

5. In the instant case, it is true that the 3rd Respondent has preferred the claim in respect of the accident in question before the Appellant within two months from the date of accident. It is also a fact that the insurance company did not deposit the said amount immediately thereafter. According to the insurance

company, there was no obligation on their part to deposit the amount at that point of time, since they have not admitted the claim. It is also the case of the insurance company that they were impleaded as a party in the claim petition only 17 months after its institution. None of these circumstances, according to us, is relevant for consideration of the question regarding the liability to pay interest. As already stated, the said question will depend on the terms of the policy of insurance issued in favour of the 3rd Respondent. If the contract of insurance specifically exclude the liability of the insurance company to pay interest on the compensation amount, the insurance company cannot be made liable under the circumstances stated herein above. If the insurance company has committed any default in depositing the amount which resulted in the liability to pay the interest, it is for the 3rd Respondent to seek appropriate reliefs against the Appellant.

6. It is made clear that the 3rd Respondent employer is liable to pay interest on the compensation amount awarded and it is for the claimants-Respondents 1 and 2 to realise the said amount from the 3rd Respondent.

The appeal is allowed as above. There will be no order as to costs.