
(2021) 04 GAU CK 0014

In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 2 Of 2015

National Insurance Company Limited

APPELLANT

Vs

Manoj Nath And Anr

RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1)(b)

Workmen's Compensation Act, 1923 — Section 3, 4A, 4A(3)(a), 4A(3)(b), 30

Citation : (2021) 04 GAU CK 0014

Hon'ble Judges : Parthivjyoti Saikia, J

Bench : Single Bench

Advocate : N Sarma

Final Decision : Dismissed

Judgement

1) Heard Ms. R. D. Mozumdar, the learned counsel appearing for the appellant as well as Mr. N. Sarkar, the learned counsel appearing for the respondent.

2) This is an appeal u/s 30 of the Workmen Compensation Act, 1923 against judgment dated 05.05.2014, passed by the Commissioner, Employees Compensation, Nagaon in NWC Case No. 97/07 awarding compensation of Rs. 2,015,40/- to the respondent no. 1.

3) The facts of the case in nutshell is like this: on 16.06.2007, the claimant was driving one vehicle bearing registration No. AS 03F/009 (truck). The

vehicle was loaded at Guwahati with sanitary tiles, mango fruit juice etc. The goods were to be unloaded at Jorhat, while the vehicle reached

Gomothagaon, in the National Highway No. 37, suddenly the differential of the vehicle broke down and the front wheels came out from the chassis of

the vehicle. The vehicle turned turtle on the road side. The accident took place at

about 4 am. The claimant/driver sustained injury on his right forearm and over the chest wall. He was taken to B.P. Civil Hospital, Nagaon for treatment with the help of Traffic Police. Nagaon Police, Traffic Branch, registered a case viz Nagaon P.S. Traffic Branch GDE No. 218, dated 16.05.2007. The owner of the vehicle informed about the accident but he did not pay any compensation.

4) The issues framed by the Commissioner, Workmen Compensation are

(i) Whether the claimant petitioner Sri Manoj Nath is an employee as per law ?

(ii) Whether the claimant Sri Manoj Nath has sustained injury in a accident during course of arising out of his employment under the opposite party no.

1?

(iii) Whether the injury sustained by the petitioner caused any permanent physical disability and if so, whether such disablement resulted any loss of his earning capacity? What would be the extent of such loss?

(iv) What would be the due amount of compensation due based on the monthly wages and age of the petitioner.

5) The respondent examined two witnesses and finally an amount of Rs. 2,0,15,40/- was awarded as compensation, after holding that the accident occurred during the course of employment of the respondent.

6) Being aggrieved by the aforesaid judgment the present appeal has been preferred.

7) The learned counsel for the appellant has submitted that the learned Commissioner failed to appreciate that the Workmen Compensation Act, 1923

stipulates that the insured (owner of the involved vehicle) is to satisfied the award in terms of the statutes and in accordance with law. Since the

provision of the statute would always prevail over any contract entered into between two individuals. Insurance Company is only to

indemnify/reimburse the awarded amount to the owner of the vehicle concerned (if any) after the amount stands paid by the said owner/insured

concerned.

8) Mrs. Mozumdar further submitted that the learned Commissioner failed to appreciate that as per the provisions of the MV Act 1988 the claimant

can chose either options from amongst the two i.e either the MV Act, or the Workmen Compensation Act not both. Mrs. Mozumdar clarified that

under the Workmen Compensation Act — employee — is not the — third party — and therefore, the said employee or his representative choosing

the provision of workmen Compensation is entitled to receive the compensation amount from the insured/employer at the first instance and not from

the Insurance Company as wrongly held, by the learned Commissioner.

9) The learned counsel for the appellant, has submitted that the driving license of the injured which was exhibited as exhibit 7 discloses that the driver

was 17 years old on the date of the accident, and therefore, he was not entitled to have valid driving license. Mrs. Mozumdar further submitted that

the respondent was the driver of the vehicle and therefore, he cannot be treated as a third party and therefore the Insurance Company is not liable to

pay any compensation to him.

10) Per contra, the learned counsel for the respondent relied upon a decision of the Honâble Supreme Court that was rendered in Ved Prakash

Garg Vs. Premi Devi and others reported in (1997) 8 SCC 1. The Para 14 reads as under:

— On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance

companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest thereon, if

ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious. As we have noted earlier the liability to pay

compensation under the Workmen's Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from

personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. such an accident is also covered by the

statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the identical provisions under the very contracts of insurance

reflected by the Policy which would made the insurance company liable to cover all such claims for compensation for which statutory liability is

imposed on the employer under Section 3 read with Section 4A of the Compensation Act. All these provisions represent a well- knit scheme for

computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier while discussing the scheme of

Section 4A of the Compensation Act the legislative intent is clearly discernible

that once compensation falls due and within one month it is not paid by the employer then as per Section 4A(3)(a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose bread-winner might have either been seriously injured or might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein. It is a statutory elongation of the liability of the employer to make good the principal amount of compensation within permissible time limit during which interest may not run but otherwise liability of paying interest on delayed compensation will ipso facto follow. Even though the Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section 4A(3)(a) still the liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally liable to be discharged by the insured employer. Consequently such imposition of interest on the principal amount would certainly partake the character of the legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not de hors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under section 4A(3) may start running for the purpose of attracting interest under sub-clause (a) thereof in

case where provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us

earlier than section 4A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by

the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such

contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by the Commissioner would

remain perfectly justified on the scheme of Section 4A(3)(a) of the Compensation Act. But similar consequence will not follow in case where

additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated

by Section 4A(3)(b) of the Compensation Act after issuing show cause notice to the employer concerned who will have reasonable opportunity to

show cause why on account of some justification on his part for the delay in payment of the compensation amount he is not liable for this penalty.

However if ultimately the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification

for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the

delay, then the penalty would get imposed on him. That would add a further sum up to 50% on the principal amount by way of penalty to be made

good by the defaulting employer. So far as this penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred

by the insured employer under the Workmen's Compensation Act. To that extent such penalty amount as imposed upon the insured employer would

get out of the sweep of the term 'liability incurred' by the insured employer as contemplated by the proviso to Section 147(1)(b) of the Motor Vehicle

Act as well as by the terms of the Insurance Policy found in provisos (b) and (c) to sub-section (1) of section II thereof. On the aforesaid

interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident

injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along

with interest thereon, if any, as imposed by the Commissioner Section 3 and 4A(3) (a) of the Compensation Act will have to be made good by the

insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies

contemplated by Section 4A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the

insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault

and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's

Commissionerâ??.

11) Reverting to the case in hand, the only ground of appeal is that the Insurance Company is not liable to pay compensation. Mrs. Mozumdar, has

submitted that the owner has to pay the first compensation and after that the Insurance Company shall pay him the compensation.

12) In Ved Prakash Garg (Supra), the Supreme Court has held that the insurance company will be liable to meet the claim for compensation along

with interest as imposed on the insured employer the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3

and Section Act on the conjoint operation of Section 3 and Section 4A

13) So far as the age of the driver/respondent is concerned, in my considered opinion, for a case under the Motor Vehicle Act, the age of the driver is

relevant. So far as the Workmen Compensation Act of 1923, is concerned, age of the driver is not that relevant as has been highlighted by the

appellant. The scheme of the Act of 1923 is that when ever, a workman gets injured during the course of his employment, his employer is to pay the

compensation. There is no doubt that the respondent/driver sustained injury, in course of his employment and that is why, he is entitled to get

compensation. This Court finds that the impugned judgment of the learned Commissioner does not required any interference by this appellate Court.

14) The appeal is found to be devoid of merit and stands dismissed accordingly.