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**(2014) 01 TP CK 0032**

**In the Tripura High Court**

**Case No :** M.F.A. (WC) No. 21 of 2007

**National Insurance Company Limited,represented by its Divisional Manager VsSmti Basanti Das and Others**

**Date of Decision :** 15-01-2014

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 147, 17

**Citation :** (2014) 01 TP CK 0032

**Hon'ble Judges :** Deepak Gupta, C.J

**Bench :** Single Bench

**Advocate :** A. Lodh, Advocate for the Appellant

**Final Decision :** Disposed Off

## Judgement

Deepak Gupta, C.J.—The short issue involved in this appeal is whether the insurance company should be held liable to pay the interest or not.

2. In my view, the insurance company cannot escape its liability to pay interest. Reference in this behalf may be made to the judgment of the Apex Court in The Oriental Insurance Company Ltd. Vs. Siby George and Others, . Reliance placed on the judgment of P.J. Narayan Vs. Union of India (UOI) and Others, is totally misconceived. Infact, in New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, the Apex Court dealing with this issue, held as follows:

By reason of the provisions of the Act, an employer is not statutorily liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer, the insurer shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor Vehicles Act does not have a statutory liability. The Act does not contain a provision like Section 147 of the Motor Vehicles Act. Section 17 of the Act does not provide for any restriction in the matter of contracting out by the employer vis-?-vis the insurer. The terms of a contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provisions of the Insurance Act. In terms of the provisions of the Insurance

Act, an insured is bound to pay premium which is to be calculated in the manner provided for therein. With a view to minimize his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in law.

3. No doubt an insurance company can enter into contract whereby it is not liable to pay the interest. If the insurance company wants to escape its liability to pay the interest, it must produce and prove the insurance policy and show that there is a clause therein that the insurance company is not liable to pay interest. In case, the insurance company does not discharge the onus which lies upon it, it must be held liable to pay the interest. In the present case the insurance policy does not show that there was any exclusion clause whereby it was not liable to pay the interest.

4. Therefore, the appeal is allowed and the award of the Commissioner, Workmen''s Compensation, is modified to the limited extent that the insurance company shall be liable to pay the interest on the awarded amount. The entire amount be deposited within 4 (four) months from today.

5. The appeal is disposed in the aforesaid terms.

Send down the LCRs forthwith.

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