(2023) 12 KL CK 0014

In the High Court Of Kerala

Case No : MFA.(ECC) No. 107 Of 2008

National Insurance Company Ltd — APPELLANT

Vs

Geetha E — RESPONDENT

Date of Decision : 01-12-2023

Acts Referred:

Workmen's? Compensation Act 1923 — Section 30
Motor Vehicles Act, 1988 — Section 147

Citation : (2023) 12 KL CK 0014

Hon'ble Judges : C. Pratheep Kumar, J

Bench : Single Bench

Advocate : Rajan P.Kaliyath, K.M.Sathyanatha Menon

Final Decision : Allowed

Judgement

C. Pratheep Kumar, J

1. This appeal has been filed under Section 30 of the Workmen's Compensation Act, by the 3rd opposite party in WCC No.279 of 2002 on the file of Commissioner for Workmen's Compensation, Kozhikode, against the order dated 16.10.2006.

2. Respondents 1 to 5 were the applicants before the Commissioner for Workmen's Compensation and respondents 6 and 7 were the opposite parties 1 and 2 therein. They applied for compensation being the legal heirs of deceased Sekharan, on the ground that Sekharan died in the course of employment under respondents 6 and 7. Appellant was the insurer, who issued Group Personal Accident Insurance Policy covering the workers of respondents 6 and 7. Before the Commissioner, the appellants contended that Exhibit R1 policy is only a Group Personal Accident Insurance Policy and that their liability is limited to the specified sum assured in the policy. Accordingly, they have already deposited Rs.2,01,652/- with respondents 6 and 7 and they are not liable to pay any further amount as per the policy.

3. However, as per the impugned order, the Commissioner for Workmen's Compensation found that they are liable to pay interest @12% p.a also for the above above sum of Rs.2,01,652/- with effect from 12.10.2001 to 1.10.2004.

4. Aggrieved by the above order, directing the appellants to pay interest @12% per annum, for the assured sum, they preferred this appeal, raising various grounds. The main contention of the appellants is that as their liability under Exhibit R1 policy was limited to the extent they contracted with respondents 6 and 7 and the policy excludes payment of interest, they are not liable to pay interest for the amount deposited.

5. Now the point that arise for consideration is the following:

1) Whether by virtue of Exhibit R1 policy, the appellant is liable to pay interest to the sum assured, as directed in the impugned order ?

6. Exhibit R1 is a Group Accident Insurance Policy. It is not a statutory policy, but purely a contractual one. In the above circumstances, parties are governed by the terms and conditions of contract. Condition No.5 in Exhibit R1 is to the effect that "no sum payable under the policy shall carry any interest". As per Exhibit R1, the liability of the Insurance Company in case of death of a workman while in the course of employment, is limited to a maximum of 83.33% of capital sum insured as stated in the schedule to the policy. Admittedly, the appellant has remitted the above contractual amount with respondents 6 and 7. Therefore, the only question remains to be answered is whether the appellant is liable to pay interest also for the above amount.

7. As I have already noted above, in Exhibit R1 policy, it is specifically stated that appellant is not liable to pay interest to any sum payable under the policy. In the decision in National Insurance Company Ltd. v. Murali [2013 (3) KLT 209], in a similar instance, a Division Bench of this Court had occasion to consider the liability of the Insurance Company to pay interest on the sum assured and held as follows:

"11. It is evident that in the Act of 1923, there is no provision corresponding to Section 147 of the Motor Vehicles Act, 1988 insisting on the insurer to cover the entire liability arising out of an accident. There is no law restraining an insurance company and an insured from entering into a contract, confining the obligation of the insurance company to indemnify a particular head or a particular amount. In these circumstances, obligation of the insurance company stands limited to the terms and conditions in the policy. Therefore, relevant provisions in the contract providing for exclusion of liability of interest or limiting their liability to a particular amount will have to be given effect to. Hence, we find that the award passed by the Commissioner against the insurance company, beyond the liability undertaken by them as per Ext.M1 policy, is legally unsustainable."

8. In the decision in National Insurance Company Ltd. v. Usha and Another [MFA.(ECC).No.210/2010], a Single Bench of this Court also considered a similar issue

and held that :

“5. The Workmen's Compensation Act, 1923, unlike the Motor Vehicles Act, does not contain any provision mandating the insurer to cover the entire liability arising out of an accident. The parties will be bound only by the terms and conditions in the policy. Provisions in the contract, limiting the liability to a particular amount and excluding liability for interest etc. will bind the parties.”

9. In the light of the above decisions as well as in the light of the terms of Exhibit R1 policy, it is to be held that the appellant is not liable to pay interest for the sum insured and as such the impugned order of the Commissioner directing the appellant to pay interest for the amount of compensation, is liable to be set aside. Point answered accordingly.

In the result, this appeal is allowed as follows:

Order of the Commissioner for Workmen's Compensation directing the appellant to pay interest @12% per annum for the amount of compensation, is set aside.