

(2020) 07 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 224 Of 2015

National Insurance Company Ltd

APPELLANT

Vs

Ghulam Mohd Shah And Others

RESPONDENT

Date of Decision : 21-07-2020

Acts Referred:

Workmen's Compensation Act, 1906 — Section 4(A)(3)(b), 30

Citation : (2020) 07 J&K CK 0033

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : C.S.Gupta

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. This appeal under Section 30 of the Workmen Compensation Act (hereinafter referred to as "the Act") is directed against the award of the Commissioner Employees' Compensation Act (ALC), Kishtwar (hereinafter referred to as "the Commissioner") dated 31.08.2010 whereby the appellant (hereinafter referred to as the ?insurer?) has been directed to pay an amount of Rs.3,00,100/- as principal amount and Rs.87,300/- as interest.

2. The appeal has been preferred on the following substantial questions of law:

(i). Whether an award can be passed against the insurer to pay interest on the compensation awarded under the Act, though the same is excluded in the Insurance Policy ?

(ii). Whether an award can be passed against the insurer without considering the terms and conditions of the contract of Insurance ?

(iii). Whether in view of there not being any statutory duty cast on the insurer to pay interest to the workmen under the Act, the Commissioner can presume its liability without there being any evidence regarding the contract between the

employer and the insurer ?

(iv). Whether an amount can become due even before it is quantified by the Commissioner and whether can be levied under the Act on the amount of compensation from the date prior to its being fixed by the Commissioner ?

(v). Whether the insurer is liable to pay an amount which, in fact, is in the nature of penalty merely because the award uses the word "interest" for it?

(vi). Whether passing an ex parte award absolves the Commissioner of the duty to examine the case of the claimant to see whether any case against the insurer is made out before fastening liability ?

3. From the perusal of questions of law proposed by the insurer, it clearly transpires that the appellant is essentially aggrieved of the award of interest by the Commissioner on the awarded amount.

4. Mr. C.S.Gupta, learned counsel appearing for the appellant submits that, in the absence of any contractual liability to pay interest under the terms and conditions of the insurance policy, the Commissioner is not competent to award interest.

5. Heard learned counsel for the insurer and perused the record.

6. The plea of learned counsel for the insurer that in the absence of any contractual liability to pay interest under the terms and conditions of the insurance policy, the Commissioner is not competent to award interest, is without any substance and deserves rejection as the issue raised herein is no longer res integra.

7. This Court in the case of Ghulam Mohd vs Divisional Manager, SFC Doda, decided on 12.03.2020 has considered the question of payment of interest under the Employees Compensation Act at length and has categorically held that compensation under the provisions of the Employees? Compensation Act, becomes due on the date of accident and if the same is not paid by the employer within one month, the same becomes payable along with interest. The liability to pay interest emanates from Section 4-A(3)(b) of the Act is statutory in nature and is not affected by any contrary provision in the contract of insurance.

8. In view of the aforesaid, I do not find any substantial question of law involved in this appeal for adjudication of this Court and in the absence thereof, this appeal filed under Section 30 of the Act is not maintainable. The same is, accordingly, dismissed.