(2017) 06 BOM CK 0130

In the Bombay High Court

Case No : 35 of 2008

Navneet S/o Sadashiv Tembhurnikar APPELLANT

Vs

Mohmmad Anwar Khan S/o Mohammad Abbas Khan, & Ors. RESPONDENT

Date of Decision : 22-06-2017

Acts Referred:

Workmens Compensation Act, 1923, Section 3, Section 4A, Section 4(1)(b), Section 4A3(a) - Employers liability for compensation - Compensation to be paid wh

Citation : (2017) 06 BOM CK 0130

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : S.N. Sarodiya, M.M. Kalar

Final Decision : Allowed

Judgement

1. The only short issue raised for consideration in this appeal is whether the insurance company will be liable to meet the claim for compensation, along with interest, as imposed on the insurance company''s employer by the Worksmen''s Compensation Commissioner under the Worksmen''s Compensation Act (hereinafter will be referred to as "Act" for convenience) on the reading of Section 3 and Section 4A sub section 3(a) of the Act.

2. This question is raised for determination by the appellant, who is the original claimant, in view of the judgment and order dated 27/04/2006 passed by Worksmen''s Compensation Commissioner under Section 4(1)(b) of the Act in application (WCA) No. 5/2003, thereby holding respondent no.1, the employer alone liable to pay the interest on the amount of compensation arrived at by the Commissioner to the tune of Rs.4,47,944/at the rate of 12% per annum from the date of cause of action till date depositing the said amount in the court.

3. According to learned counsel for appellant though while arriving at this finding, the Commissioner under the Act, has relied upon two judgments, one is

that of Hon''ble Supreme Court in the case of New India Assurance Co. Ltd. VsShiv Singh and another, 2000(2) TAC 618 and another of our own High Court in New India Assurance Co. Ltd. VsMohd. Yusuf Inamuddin Pirijade and others, 2004(3) TAC 227; it is submitted that the Commissioner has ignored the judgment of the Hon''ble Apex Court in the case of Ved Prakash Garg VsPremi Devi and others, (1997) 8 Supreme Court Cases 1, wherein there is detailed discussion as to how the insurance company will also liable to pay the interest on the amount of compensation, along with the employer. It is also submitted that there is decision of our own High Court also in United Insurance Co. Ltd. VsSarsabai Kishanrao Sontakke and others, 2006(5) Mh.L.J. 630 and of the Hon''ble Supreme Court in Kamla Chaturvedi VsNational Insurance Company and others, 2009(3) Mh.L.J. 521 holding that insurance company is jointly and severally liable along with employer to pay the interest on the amount of compensation though it will not be liable to pay the penalty on the said amount.

4. Now, in order to decide this legal issue, it would be necessary to consider the observations of the Hon''ble Supreme Court in the abovesaid case of Ved Prakash Garg VsPremi Devi (supra). The similar issue was raised in the said case also and while deciding the same, the Hon''ble Supreme Court, after considering various provisions under Section 147 of the Motor Vehicles Act and Section 4A (3)(a) of the Act, was pleased to hold in para no.14 as follows :

" 14. 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 wellknit 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 breadwinner 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 follows. 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 dehors 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 f 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 subclause (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 then 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."

(Emphasis supplied).

5. Thus, in this authority it is conclusively held by the Hon''ble Supreme Court that liability to pay the interest is part and parcel of the legal liability to pay compensation and it gets automatically fastened upon the employer on his default in payment of compensation within one month from the date it falls due, without any penalty and if such an accident is covered by statutory coverage contemplated by Section 147 of the Motor Vehicles Act, read with identical

provisions under the very contract of insurance reflected by the policy which would make company liable to cover such claims for compensation, the statutory liability is imposed on the employer under Section 3 read with Section 4A of the Act, and therefore, when the employee suffers the accident while on duty, the claim for compensation payable under the Act along with interest thereon, as imposed by the Commissioner under Sections 3 and 4A(3)(a) of the Act will have to be made good by the insurance company jointly with the insurance employer.

6. Relying on this judgment, this court has also in the case of United Insurance Co. Ltd. VsSarsabai, referred above, has held that liability covered by insurance company though does not extent to payment of penalty, it definitely extends to pay interest on the amount of compensation, awarded by the Commissioner.

7. In the decision of Kamla Chaturvedi also relied upon by learned counsel for appellant in para no.6 relying on the above decision of Ved Prakash Garg VsPremi Devi (supra), it was held that, "The insurance company is liable to pay not only principal amount of compensation payable by the insurer employer but also interest thereon, if ordered by the Commissioner to be paid to the insured employee".

8. Though learned counsel for respondents has in this appeal relied on the authority of National Insurance Co. Ltd. VsKanai Dasgupta and others, 2006(111) FLR 350, wherein Single Judge of Guwahati High Court, Agartala Bench, was pleased to hold that "Insurer has no statutory liability to pay interest on the amount of compensation", in view of the legal position upheld by the Hon''ble Apex Court in the case of Ved Prakash Garg VsPremi Devi and further confirmed in its various other decisions, this judgment of Guwahati High Court cannot be relied upon to deny the claim of interest as made by appellant from the insurance company. The law on this point is fairly well crystalized to the effect that though insurance company is not liable to pay the amount of penalty in such cases, its liability to pay the interest cannot be denied.

9. In view thereof, this appeal deserves to be allowed, and accordingly stands allowed.

10. The impugned judgment and order of the Commissioner under Worksmen''s Compensation Act, is modified to the extent that both respondent nos.1 and 2 are held jointly and severally liable to pay the interest at the rate of 12% per annum from the date of cause of action till deposit of the said amount in the court.

11. Rests of the impugned judgment stands confirmed.

12. Appeal is disposed of in abovesaid term.