
(2004) 08 BOM CK 0096
In the Bombay High Court
Case No : First Appeal No. 60 of 1992

Nazma Shafi Shaikh and Another

APPELLANT

Vs

Ashok Pannalal Gandhi and Another

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Workmens Compensation Act, 1923 — Section 4A(3)

Citation : (2005) 3 ACC 145 : (2005) ACJ 1743 : (2005) 2 BomCR 898 : (2004) 4 MhLj 555

Hon'ble Judges : N.V. Dabholkar, J

Bench : Single Bench

Advocate : S.D. Pokharkar, for the Appellant; V.H. Upadhye, for the Respondent

Judgement

N.V. Dabholkar, J.—Original claimants, feeling aggrieved about quantum of compensation awarded, have approached this court in the First Appeal. Hasan Yasin Shaikh, husband of claimant No. 1 and father of claimant No. 2, died in an accident on 22-7-1987. He was employed with present respondent No. 1 as a Driver on his Matador MXD 7960. Other details of the accident need not be stated.

2. Claimants claimed compensation u/s 4 of the Workmen's Compensation Act. It is admitted by respondent No. 2 - Insurance Company that the vehicle in question was insured with it, the policy was in force on the material date and it covered the risk of the driver. It was a policy of vehicle under Motor Vehicles Act, 1923, covering risk of nine passengers plus one driver. The Commissioner for Workmen's Compensation and Judge, Labour Court, Ahmadnagar, vide his judgment dated 24-4-1990, in Application WC 3/1988, has awarded compensation of Rs. 69,910/-, penalty Rs. 5,000/- and simple interest @6% p.a from the date of the judgment till realization.

3. While arguing for enhanced compensation, Advocate Shri S.D. Pokharkar urged that claimant Nazma, in her deposition, had stated that salary of deceased was Rs. 1,950/-, yet, trial Court has computed the compensation by taking into

account salary to be Rs. 800/-. As can be seen from the record of trial Court, report of the accident of workman was filed by the employer with Insurance Company which is at Exh. C-14 of the record of the trial Court. In the report, his monthly wages are stated to be Rs. 800/-. This was the salary earned between 21-6-1987 to 20-7-1987. Although he was paid further amount of Rs. 195/-, it was his allowance for thirteen days @Rs. 15/- per day, when on a tour. Advocate Shri S. D. Pokharkar desired that as against this statement of employer, deposition of claimant ought to have been accepted.

It must be said that deposition of claimant is a self-serving statement. Same thing cannot be said about an accident report submitted by the owner. If the salary of the employee is on higher side, there is no reason why the employer should state it on lower side, while reporting the matter to Insurance Company. Obviously, report was made to Insurance Company with the belief that Insurance Company will be required to pay the compensation, as a result of contract of insurance between the employer and Insurance Company. I, therefore, do not agree with the submission of Advocate Shri S.D. Pokharkar, that original statement of claimant should have been preferred over the wrong report by the employer submitted to Insurance Company for the purpose of compensation immediately after the accident.

4. So far as the penalty is concerned, no doubt, by virtue of Section 4-A(3)(b), penalty can be awarded to the extent of 50% of the compensation, but it is the discretion of the Court. Although Advocate Shri S.D. Pokharkar feels penalty of Rs. 5,000/- to be on lower side, the same is awarded along with interest and in fact, even this penalty amount is further charged with interest, along with interest of compensation of Rs. 69,910/-. I am, therefore, not inclined to interfere with the penalty amount or enhance the same.

5. The interest is awarded from the date of judgment. In fact, interest is payable as a result of default on the part of the employer/Insurance Company to pay compensation within one month. Ordinarily, interest shall be payable on the amount which becomes due, but there is no reason why it should not be paid at least from the date of claim petition. The appeal, therefore, will have to be partly allowed, with a modification in the order of trial Court and interest @ 6% p.a. shall be applicable from 4-1-1988, i.e. from the date of filing of claim petition, instead of 24-4-1990 i.e. from the decision of trial Court, till realization.

6. Shri V.N. Upadhye, Advocate for the Insurance Company, has pointed out that learned Judge has awarded interest also on the penalty amount of Rs. 5,000/-. On reference to Section 4-A(3) and more particularly, Sub-clauses (a) and (b) of the same, it appears that penalty is to be awarded in addition to the interest. Therefore, it can be inferred that penalty cannot be a part and parcel of the amount chargeable with interest. Hence, interest @ 6% p.a. shall be charged on Rs. 69,910/-.

Claimants, therefore, shall be entitled as follows :--

(1) Compensation Rs. 69,910/-

(2) Penalty Rs. 5,000/-

(3) Interest @ 6% p.a. on Rs. 69,910/- from 4-1-1988, till realization.

7. By relying upon observations of the Apex Court in the matter of P.J. Narayan v. Union of India and Ors. 2004 ACJ 432, Advocate Shri V.N. Upadhye prayed that liability to pay the interest may not be saddled upon Insurance Company. In the reported judgment, if was a writ petition which prayed for a direction to an Insurance Company to delete a clause in an Insurance Policy which provided that in case of compensation under Workmen's Compensation Act, 1923, the Insurance Company will not be liable to pay interest. The Supreme Court observed that:--

"There is no statutory liability on the Insurance Company. The statutory liability under the Workmen's Compensation Act is on the employer. An insurance is a matter of contract between the insurance company and the insured. It is always open to the insurance company to refuse to insure. Similarly, they are entitled to provide by contract that they will not take on liability for interest."

It is evident from the details available, that it was a dispute regarding a policy under Workmen's Compensation Act. In present case, respondent-Insurance Company has come in picture as Insurance Company of the vehicle and Insurance Company which is liable to indemnify the owner of the vehicle, in case, liability arises under the Motor Vehicles Act. Claimants have taken resort to the provisions of Workmen's Compensation Act for the purpose of arriving at quantum of compensation, which is practically a no fault liability compensation. Under the policy under Motor Vehicles Act, Insurance Company is liable to indemnify the owner to the fullest extent, unless there are restrictions and limitations included in the insurance contract itself. The ratio laid down by the Apex Court, therefore, being pertaining to policy under Workmen's Compensation Act, 1923, cannot offer support to Insurance Company to disclaim the liability. The submission of Advocate V.N. Upadhye, to that effect, is therefore, rejected.

8. The appeal is partly allowed, as stated hereinabove and accordingly disposed of. No order as to costs.