(1992) 02 MP CK 0006

In the Madhya Pradesh High Court

Case No : F.A.O. No. 147 of 1981

New India Assurance Co. Ltd. APPELLANT

Vs

Anokhilal and Others RESPONDENT

Date of Decision : 17-02-1992

Acts Referred:

Employees Compensation Act, 1923 — Section 2

Citation : (1992) 2 ACC 68 : (1993) ACJ 216

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : M.L. Dhupar, for the Appellant; G.K. Neema, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.—The New India this appeal against the award dated 2.3.1981, Assurance Co. Ltd., Indore, has come up in passed by the Motor Accidents Claims Tribunal, Jhabua, in Claim Case No. 1 of 1979.

2. The claimants claimed compensation of Rs. 10,600/- for the death of Goverdhan on 27.11.1978, arising out of use of motor vehicle truck No. GTB 6055. The deceased was 21 years of age and was employed as a cleaner on the said truck on the monthly wages of Rs. 260/- per month. The Tribunal after appreciating evidence awarded Rs. 37,800/- as compensation with 6 per cent interest per annum from the date of the application, i.e., 24.1.1979.

3. Mr. M.L. Dhupar, learned Counsel for the appellant, contended that according to the terms of the insurance policy, the risk of the cleaner was covered, who is a ''workman'' u/s 2(1)(n) of the Workmen''s Compensation Act, 1923 (for short ''the Act''), therefore, the compensation could not have been awarded more than Rs. 18,000/- which is statutorily prescribed under the Act. To support his contention, the learned Counsel pressed into service, Samaraj Oil Mills & Fertilizers v. D. Kothandaraman 1970 ACJ 405 , Venkataraman v. Abdul Munaf Sahib 1971 ACJ 77 and Jaswant Rai v. National Transport & General Co. Ltd.

1972 ACJ 21 .

4. In my opinion, the law has been settled by the decisions of this Court, wherein it has been laid down that a statutory duty is cast upon the insurer under Sub-section (1) read with proviso (1) of Section 95 to indemnify the insured against any liability to pay the compensation to his employee under the Act and such a provision has been made in the insurance policy. As the choice is with the heirs and the heirs have chosen the forum of the Claims Tribunal Judge, instead of the Commissioner for Workmen''s Compensation, they are entitled to receive the compensation to the extent of insured''s liability fixed by the Motor Vehicles Act, 1939 and the insurance company cannot be allowed to say that insured''s liability is limited under the Act [See Oriental Fire & Genl. Ins. Co. Ltd. v. Dhanno 1987 ACJ 759 and Kishori v. Gulabkhan 1988 ACJ 860 and the view of Calcutta and Madras High Courts in Oriental Fire and Genl Ins. Co. Ltd. and Another Vs. Josheda alias Joshoda Bala Ghanta and Another, and United India Insurance Co. Ltd. Vs. Angammal and Others,

5. Shri G.K. Neema, counsel for the respondents/claimants, submitted that the Tribunal erred in awarding the interest at the rate of 6 per cent per annum on the amount of compensation from the date of filing of the application, whereas it ought to have been at the rate of 12 per cent per annum. Mr. Dhupar counteracted and submitted that there are no cross-objections. But in my opinion the submission of Mr. Dhupar has no merit as the Full Bench of this Court in the case of Prakramchand Vs. Chuttan and Others, has taken a view that the Tribunal is bound to award interest at the rate of 12 per cent per annum and for that no cross-objections are necessary, as powers under Order 41, Rule 33, Civil Procedure Code, are wide.

Accordingly, the appeal is dismissed with costs, with a direction that the appellant company shall deposit the balance amount of interest at the rate of 6 per cent per annum from the date of the application till the date of compensation deposited in the bank, which claimants shall be entitled to withdraw with all accrued interest. Appellant company to pay the costs. Counsel''s fee Rs. 500/- if precertified.

