

(2014) 02 KL CK 0068
In the High Court Of Kerala
Case No : M.F.A. No. 85 of 2013

New India Assurance Co. Ltd.

APPELLANT

Vs

Lilla Francis

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Workmens Compensation Act, 1923 — Section 22, 3(1), 4, 4(a), 4A

Citation : (2014) 3 ACC 161 : (2014) ACJ 1800 : (2014) 2 AnWR 815 : (2014) 2 KLJ 88 : (2014) 1 KLT 731 : (2014) LLR 431 : (2014) 3 SCT 227

Hon'ble Judges : K.M. Joseph, J;A.K. Jayasankaran Nambiar, J

Bench : Division Bench

Advocate : Mathews Jacob, Sr. Advocate and P. Jacob Mathew, Advocate for the Appellant; C. Anilkumar (Kallesseril), A.S. Benoy and Jimmy George, Advocate for the Respondent

Judgement

K.M. Joseph, J.—The appellant is the second opposite party in the proceedings under S. 22 of the Workmen's Compensation Act. Besides ordering payment of compensation amount of Rs. 2,71,120/-, the appellant has also been mulcted with liability to pay interest at 12% from 23.5.2008 (date of the accident of the employee) till the date of deposit within 30 days of receipt of that order. It is the said direction, which is impugned before us. We heard the learned senior counsel for the appellant and the learned counsel for respondents 1 to 4.

2. The learned senior counsel for the appellant would contend that it is a clear case where there is a contract of insurance. Significantly, there is a clause in the contract by which the insurer has been excluded from the liability to pay interest. This fact is not in dispute. However, the Commissioner has proceeded to award interest on the basis that intimation has been given by the employer and that the matter is delayed by the appellant. He submits that in view of the clear provision contained in the contract, the appellant cannot be called upon to pay interest. He relied on the judgments of the Apex Court in *New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another*, *Kancherla Bhagya and Others Vs.*

K. Balakotaiah and Another, and unreported judgment in MFA No. 8/2006.

3. Per contra, the learned counsel for the respondents 1 to 4 would submit that principle of the above mentioned decisions will not apply to the facts of this case. He would submit that it is a case where the employer intimated the appellant about the accident. It is a case of death and nothing stood in the way of the appellant from honouring the obligations, which had incurred under the contract of insurance. Therefore the appellant cannot, at the end of the day, plead exclusionary clause in the contract of insurance in support of its immunity from paying the interest. In this case it is, no doubt, true that the appellant had taken the contention that employer-employee relationship is disputed. But, there is no evidence in support of the same. The appellant has not adduced oral evidence. The Commissioner has in fact found that, initially the appellant denied all the averments in the application, but did not make any objection to the interest claimed by the applicants. It is also found that the contention of the appellant that, the first opposite party has not intimated the alleged accidental injury, is not sustainable in view of Exts. B1 and B3. It is thereafter that the Commissioner proceeded to pose questions as to whether the applicants are eligible for interest from the date of accident and who among the opposite parties are liable to pay interest.

4. The accident was occurred on 23.5.2008. It is also true that it is a case of death. In the case of death and if employer-employee relationship is not in dispute, the Workmen's Compensation Act provides formula for determining compensation. Therefore, ordinarily the insurer, if the contract of insurance is admitted and the insurer has been intimated about the happening of the incident resulting in death and that the facts are not in dispute, should not shrug off its responsibility in honouring the commitments, which are undertaken under the contract of Insurance. This principle comes into more sharp focus when the insurer is a public sector unit and is also aware of the claim under the Workmen's Compensation Act. In this context it is noted that there is liability on the employer to make payment within 30 days failing which the liability to pay interest is incurred from the date of the accident and the insurer has specifically chosen to exclude it in the contract.

5. Notwithstanding the observation which we had made hereinbefore, the fate of this case must be decided with reference to impact of the exclusionary clause. The contention is taken by the learned counsel for the respondents 1 to 4 that when there is a contract of insurance, the liability to pay compensation will be shifted from the employer to the insurer. We are afraid that there is no merit in the said contention as such. As per S. 3(1) of the Act, if personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions contained in Chapter II. S. 4 deals with the amount of compensation payable in various situations. Section 4(a) deals with compensation for death resulting from injury. Thereafter S. 4A(1) provides that compensation under S. 4

is to be paid as soon as it falls due. Sub-s. (2) of S. 4A being relevant we extract the same. It reads as follows;

(2). In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.

Therefore, it is clear that irrespective of whether there is a contract of insurance or not the liability is cast on the employer to make payment. A contract of insurance is not a statutory requirement, under the Workmen's Compensation Act except in a case covered by S. 147 of the Motor Vehicles Act. If there is such contract, we cannot hold that the employer will cease to be liable to the employee or legal representatives to make payment in a case of injury or death as the case may be respectively. When there is a contract of insurance, the insurers indemnifies the insured. Under the Workmen's Compensation Act, it is always open to the employer to enter into contract of insurance. The terms of the contract of insurance, except in a case covered by S. 147 of the Motor Vehicles Act, are to be decided between the parties viz. employer and the insurer. Necessarily, the court must look into the terms of the contract in order to find out the extent of liability of the insurer. As held by the Apex Court, it is open to the insurer to exclude the liability to pay interest. Therefore, irrespective of the question as to whether there was delay and also whether delay is occasioned due to non-payment of the amount by the insurer even though the claim was lodged by the employer within the time, it is still open to the insurer to ward off the liability to pay interest in view of the contractual provision which enables it to do so. It is noted that this contention is raised not by the employer who has entered into the contract with the insurer, but the contention is taken by the applicants. Whatever that be, we would think that in view of the legal position, the contention of the applicants has to fail.

The appeal is allowed. The impugned order is modified. The direction of the Commissioner, that the appellant will pay interest, is vacated. Instead, the 5th respondent shall be liable to pay interest from the date of the accident at the rate of 12% till the date of deposit as ordered by the Commissioner. The amount already deposited by the appellant representing the interest directed to be paid, can be withdrawn by it.