

(2004) 06 BOM CK 0059
In the Bombay High Court
Case No : First Appeal No. 235 of 1990

New India Assurance Co. Ltd.

APPELLANT

Vs

Mohammad Yusuf Inamuddin Pirjade and Others

RESPONDENT

Date of Decision : 17-06-2004

Acts Referred:

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

Citation : (2005) 3 ACC 214 : (2005) ACJ 766 : (2004) 4 ALLMR 312 : (2005) 2 BomCR 415 : (2005) 104 FLR 202 : (2004) 4 MhLj 364

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : S.R. Singh, for the Appellant;

Judgement

Nishita Mhatre, J.—This First Appeal is directed against the order of the Commissioner for Workmen's Compensation dated 24.1.1990. According to the Appellant-insurance Company, it is not liable to pay any interest or penalty on the amount due. The learned Advocate for the Appellant states that at the time of filing the appeal, the appellant has deposited the entire amount as awarded before the Commissioner as a precondition to filing the present appeal. While admitting this appeal, this Court has permitted the Respondent-applicants to withdraw the amount of Rs. 66,813/- which is the amount of compensation awarded.

2. There is no dispute that the deceased workman was employed with Respondent No. 7. Respondent No. 7 was insured with appellant. An accident occurred on 24.1.1988 when the workman expired during the course of employment. The Commissioner for Workmen's Compensation has held that the deceased was employed with Respondent No. 7 and 8 herein, and that the accident took place out of and in the course of employment. The monthly wages have been accepted as Rs. 750/- and on this basis, the amount of compensation has been computed at Rs. 66,813/-. The Commissioner has then awarded interest "12% per annum and penalty of 50%.

3. There is no doubt that the Commissioner under the Workmen's Compensation Act can award interest or penalty u/s 4A(3) of the old Act. However, interest under the Act as applicable at the time of the accident in 1990 was payable at 6% per annum. In any event, the Commissioner has erred in awarding interest against the insurance company as the cover note for the insurance company stipulates that the insurance cover would not extend to indemnify the insured in respect of any interest and/or penalty which may be imposed on the insurer on account of his failure to comply with the requirements of the Workmen's Compensation Act. The Commissioner, therefore, ought to have directed interest to be paid only by Respondent Nos. 7 and 8. Moreover, penalty cannot be imposed on the insurance company, especially when the policy cover does not apply to penalty. Moreover, the judgment of the Supreme Court in the case of New India Assurance Co. Ltd. Vs. Shiv Singh and Another, , it has been held that the primary liability is that of the employer. Any additional amount of compensation or penalty imposed on the insured employer would be the liability of the insured employer and not of the insurance company. In the case of P.J. Narayan Vs. Union of India (UOI) and Others, , the Apex Court has taken the view that the clause in the insurance policy stipulating that the insurance company will not be liable to pay interest is a matter of contract between the insurance company and the insured and the insurance company cannot be forced to take over the liability which it has refused to indemnify the insured.

4. In view of this, the appeal succeeds. The appellant-insurance company is not liable to pay interest or the penalty as awarded by the Commissioner. However, these amounts may be recovered by the Respondent-applicants from Respondent No. 7 and 8 herein. The amount deposited with the Commissioner for Workmen's Compensation shall be refunded to the insurance company alongwith accrued interest if any. The compensation of Rs. 66,813/- has already been withdrawn by the applicants.

5. Appeal is disposed of accordingly.