

(1997) 07 MP CK 0017
In the Madhya Pradesh High Court
Case No : M.A. 685 of 1995 (I)

New India Assurance Co. Ltd.

APPELLANT

Vs

Pappu Singh and Others

RESPONDENT

Date of Decision : 26-07-1997

Acts Referred:

Citation : (1999) 1 MPJR 333

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Advocate : H.G. Shukla, for the Appellant; Manish Jain, Advocate, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.

The appellant, New India Assurance Co. Ltd. (hereinafter referred to as insurance company for convenience) is hereby assailing the correctness, propriety and legality of the award passed by Commissioner for Workmens Compensation, Ratlam in Case No. 9/WCNF/91 by which compensation to the tune of Rs. 56,000/- plus 28,000/- has been granted to the respondent along with interest at the rate of 6% per annum from the date of accident.

Few facts need to be stated for unfolding the matter. The claimant Pappusingh was in service of respondents 2 and 3 on 21.2.91 when he was driving the tractor bearing no. MP-13-A-5230 belonging to respondents 2 and 3. When he was driving the said tractor and was passing by the road leading to Bhamori from Lunera, the tractor turtled and respondent Pappusingh got under it resulting to serious injuries to him. Those injuries resulted in amputation of his right leg in an operation which was performed in M.Y. Hospital, Indore. A report was lodged in respect of said accident which is Ex.P-7. A notice was given by respondent no. 1 to respondents 2 and 3 and the appellant in respect of said accident and the disability caused to respondent no. 1 on 18.7.91. The respondents 2 and 3 and

the appellant had received the said notice. There is no dispute about that. There is no dispute that the said tractor was belonging to respondents 2 and 3 and was insured with the appellant. There is no dispute that on the date of the said accident respondent no. 1 was in service of respondents 2 and 3 and he was driving the said tractor during discharge of his duty as employee of respondents 2 and 3.

The parties contested the claim before the Workmen Compensation Commissioner who after appreciating the evidence on record concluded that the said accident took place when respondent no. 1 was driving the said tractor as employee of respondents 2 and 3. The Commissioner held that respondent Pappusingh sustained accidental injuries in the said accident which resulted in amputation of his right leg in operation performed on him in M.Y. Hospital, Indore and he sustained 100% disability on account of that. The Commissioner held that appellant and respondents 2 and 3 were jointly and severally liable to pay an amount of Rs. 56,000/- as compensation to respondent no. 1 Pappusingh. The Commissioner also held that appellant and respondents 2 and 3 were in default in paying the amount of compensation to respondent no. 1 as soon as it fell due. Thus, on account of this default the Commissioner imposed penalty on the appellant and directed to pay 50% of said compensation amount as penalty. The interest was indicated as 6% per annum on the amount of compensation from the date of accident.

Shri H.G. Shukla, learned counsel for the appellant insurance company argued that the insurance company is not liable to pay the compensation as well as the penalty to respondent no. 1 and the learned Commissioner has committed legal error on that count. Shri Manish Jain, learned counsel appearing for respondent no. 1 placed reliance on the judgment of Division Bench of this Court in Misc. Appeal No. 40 of 1989 wherein it has been held that in such cases the insurance company cannot avoid liability of paying the compensation amount as well as the amount of penalty coupled with interest. In the matter of New Indian Assurance Co. V. Tarabal (M.A. No. 40/89) the Division Bench of this Court of which I was a member, held that in view of provisions of Section 4-A of Workmen's Compensation Act, 1929 (hereinafter referred to as the Act) the employer is liable to make payment of compensation as soon as it was due and when the vehicle has been insured with the insurance company, the liability of making good the said payment falls on the insurance company. It has been further held that in view of provisions of Section 4 (3A) the employer and insurance company are liable to pay the interest on that amount of compensation, if paid by causing delay. So also they are liable to pay the penalty on account of such delayed payment.

In the said judgment the Division Bench of this Court also held that while imposing the penalty on the employer and the insurance company, the Workmen Compensation Commissioner is obliged to give opportunity of hearing to them. Shri H.G. Shukla, counsel appearing for appellant, argued that in the present

matter no such opportunity has been given to the appellant for showing cause as to why such penalty should not be imposed. He further argued that the insurance company was not aware of the disability sustained by respondent no. 1 and, therefore, was unable to assess it and was unable to make the payment of such amount as soon as it fell due. Shri Shukla further argued that in the present case respondents 2 and 3 did not provide any information to the appellant in respect of the disability sustained by respondent no. 1 as well as the amount of salary-which was being paid to him. He argued that on account of this also the appellant was prevented from making payment of compensation amount to respondent no. 1 as soon as it fell due. Shri Mansih Jain, counsel appearing for respondent no. 1 pointed out that a notice was issued to respondents 2 and 3 as well as the appellant by respondent no. 1 on 18.7.91 and in that notice it was informed to the appellant that in the said accident respondent no. 1 sustained serious injuries which resulted in amputation of his right leg in an operation which was performed on him in M.Y. Hospital, Indore on 11.3.91 which resulted in 100% permanent disability. He also submitted that compensation of Rs. 1,12,000/- was claimed from respondents 2 and 3 and the appellant. Therefore, it cannot lie in the mouth of appellant to say that it was kept unaware so far as the claim of compensation of respondent no. 1 was concerned.

I uphold the submission which has been advanced by Shri Manish Jain, counsel appearing for respondent no. 1 for the reasons stated hereunder: After receiving the said notice Ex.P-3 dated 18.7.91 there was nothing to prevent the appellant insurance company to seek necessary information from respondents 2 and 3. As soon as such notice is received by the insurance company, it is its duty to get necessary information from the owner of the vehicle which happens to be insured with it. That would enable the insurance company to have sufficient information to assess the amount approximately to be paid by it in view of provisions of Section 4-A of the Act as soon as it falls due. In the present case had it been done by the appellant, it could have been heard on this point but in the absence of any attempt made by the appellant in that context, now it is estopped from agitating this point in this appeal at this stage. Besides that, when Dr. Tomar was examined on behalf of claimant before the Commissioner on 24.3.95, after examination of Dr. Tomar was over it was necessary for the insurance company to deposit the approximate amount of compensation, which would have been required to be paid to the claimant, for avoiding the liability of paying the penalty on account of delayed payment. In fact, as soon as the petition stands submitted before the Commissioner and insurance co. receives its notice, the insurance company is obliged to deposit the approximate amount of compensation which would be required to be paid to claimant. As soon as the claim petition is presented, and the policy is in force, the insurance company can for the purpose of avoiding the liability of payment of penalty ask the owner of the vehicle to share the responsibility in that context if there are good reasons to do so. In that context insurance company is entitled to move appropriate application before the Commissioner for distribution of liability of payment of such amount, if

permissible and if necessary. These things are to be done by the insurance company for avoiding the risk of incurring penalty for delayed payment. Atleast some attempts are to be made by the insurance company in this respect. In the present case nothing of the sort has been done and, therefore, I do not find any substance in the grievance that the penalty has been saddled on the insurance company unjustifiably. In view of the submission that no opportunity of being heard was given on the count of penalty, this Court has examined the record of the present matter very carefully and after that this Court has come to the conclusion that opportunity has not been denied to the insurance company.

Section 4-A of the Act provides that the Commissioner may impose penalty for such delayed payment of compensation which can be upto 50% of the compensation amount. It does not mean that in every case the penalty should be upto 50% of the compensation amount. A discretion has been granted to the Commissioner to impose such penalty which would be limited to 50% of the compensation amount. While imposing such penalty the Workmen Compensation Commissioner is obliged to pass a speaking order and to give reasons for justifying his decision to impose a penalty and to justify the extent of penalty. In the present case respondent no. 1 is also shouldering the negligence along with respondents 2 and 3. He being the victim, his default would be considered sympathetically. He should have produced the medical certificate along with the petition and thereafter should have led the evidence as early as possible. In the present matter adjournments have been sought on behalf of respondent no. 1-claimant. Such delay on the part of the victim is deprecated. He is to see that no adjournment is sought on his behalf unless there are compelling grounds to do so. It is for the simple reason that on account of such delay the insurance company who is shouldering the responsibility of making payment of compensation is required to pay interest at the rate of 6% per annum for a longer period prejudicing the public money. Had this claim petition been tried at early date and no adjournments had been sought, the interest which the insurance company is now required to pay would have been reduced. That would have reduced the burden on public money. Let the concerned persons think about it seriously.

Thus, in view of the discussion above the appeal is partly allowed. The amount of compensation which has been awarded to the respondent no. 1 stands confirmed. However, the penalty is hereby reduced from 50% to 30% of the compensation amount keeping in view the reasonable assessment of the delay for which all the parties are responsible. The interest as awarded by the Workmen Compensation Commissioner is to be paid by respondents 2 and 3 and appellant in context with said amount of compensation from the date of accident. Counsel's fee Rs. 500/-