(1997) 02 MP CK 0033

In the Madhya Pradesh High Court

Case No : M.A. No. 192 of 1992

New India Assurance Co. Ltd. APPELLANT

Vs

Radhabai and Others RESPONDENT

Date of Decision : 05-02-1997

Acts Referred:

Citation : (1997) 02 MP CK 0033

Hon'ble Judges : R.D. Vyas, J

Bench : Single Bench

Advocate : N.C. Behl and Anwarkhan, for the Appellant; S. Patwa, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Vyas, J.—This appeal is filed by the insurance company against the award granted by the Commissioner for Workmen''s Compensation by its order dated 1.5.1992, whereby he was pleased to grant Rs. 23,100/- plus interest and penalty as detailed in the judgment.

2. The counsel for the appellant argues that the insurance company cannot be saddled with the liability as is done by the Commissioner for Workmen''s Compensation. He has also argued a few hyper-technical points such as that the transfer from the Commissioner at Nasik to Indore was not according to law. He argued that the penalty clause also can not be fastened upon the insurance company as the Workmen''s Compensation Commissioner does not have the jurisdiction over the insurance company. He also argued that before imposing the penalty, the appellant ought to have been given an opportunity. He also argued that the insurance company was not also originally made a party before the Workmen''s Compensation Commissioner at Nasik but has been made a party after five years when the matter was transferred to the Workmen''s Compensation Commissioner at Indore.

3. There are also cross-objections filed by the respondent Radhabai, who claimed

that because of the change in the law now the compensation ought to be Rs. 50,000 and no less. She referred to the amendment in the Motor Vehicles Act as also the Workmen''s Compensation Act.

4. Coming to the argument of Mr. Anwarkhan, counsel for the appellant, it is to be observed that so far as the appellant is concerned, it cannot be argued on the liability of an employer. If the liability is fixed the insurance company indemnifies the employer under the contract of insurance under the provisions of the Motor Vehicles Act where the accident occurs because of the use of the motor vehicle. This case at least is covered by that provision as the accident has occurred out of the use of motor vehicle. So far as the penalty is concerned, the argument of the insurance company that the penalty cannot be imposed on it can be agitated by the company before appropriate forum. The Workmen''s Compensation Act Authority is no forum to decide the inter se terms and conditions of the insurance company and the insured. So far as the argument regarding giving an opportunity to the appellant with respect to the penalty is concerned, the same gets reply from the above that if under the contract the insurance company is not liable it may exercise its rights before the forum where they can agitate the question of the terms and conditions of the policy contract.

5. The point regarding limitation, which is indirectly argued when Mr. Anwarkhan argued that the insurance company was made a party after several years also gets its reply from the above. Therefore, it does not require separate discussion.

6. With respect to the cross-objections, Mr. Patwa for the respondents argued that the Workmen''s Compensation Commissioner has not properly appreciated the evidence of the appellant Radhabai, PW 2 and evidence of Pappu, PW 1, both of whom have said that the deceased Jagdish was earning Rs. 650/- plus Rs. 10/- per day by way of daily allowance on tour. Since there is no basis to come to the conclusion that for how many days the deceased would have visited, the assessment of the Tribunal is accepted and it could be held that the deceased must have been earning Rs. 150/- by way of daily allowance on tour. This brings the total earning of the deceased to Rs. 800/- and, therefore, Mr. Patwa argues that the compensation amount should have been on the basis of the total earning of the deceased Jagdish at Rs. 800/- and not less than that. From the Schedule, as it was applicable on the date of death of the deceased Jagdish he pointed out that the respondent is at least entitled to Rs. 27,000/- if not Rs. 50,000/-which is available today. He argued that under the Motor Vehicles Act, there are judgments taking the view that while assessing the compensation in case of deaths or even in the case of permanent disabilities, the trend of this Court is that the amended provisions of the Motor Vehicles Act are borne in mind.

7. Against this Mr. Anwarkhan argues that so far as the Workmen''s Compensation Act is concerned, it is a different type of litigation between the employers and the employees where in spite of the fault of the employee, he is still to be given a compensation if the accident occurs during the course of his employment under the terms and conditions of service under that Act. He argued

that so far as the jurisdiction of the Workmen''s Compensation Commissioner is concerned and so far as the computation of the compensation is concerned, the same is fixed by the legislature by annexing Schedule to the Act. According to him the Schedule to the Act gives a right to the party to get fixed the compensation under the terms and conditions as provided in the Workmen''s Compensation Act. There is no question of the Commissioner assessing the compensation and, therefore, the question as to the legislative intent cannot be applied as in the case of Motor Vehicles Act. I think Mr. Anwarkhan''s arguments have a force. Looking to the Scheme of the Workmen''s Compensation Act, there is a Schedule fixed under the terms and conditions of the employer and employee and looking to their relations and the occupational hazards the Schedule is based on a specific data of the salary and other emoluments allowable to an employee in relation to the span of service. Again, the forum also has been borne in mind by the legislation, it seems.

8. In any case, in this case, since the appellant is the insurance company it has to go before some other forum to get the decision as to any dispute regarding terms and conditions in the policy contract between the insurance company and the insured. The Workmen''s Compensation Act forum cannot decide such disputes as it cannot be decided summarily as is required by the Act. It requires long-drawn litigation and a workman or his heirs cannot be made to suffer a lengthy litigation between the insurance company and the insured, so as to deprive the immediate fruits of the conditions of service. In that view of the matter, I dismiss this appeal leaving it to the appellant to go before appropriate forum if it so chooses and since the employer has not come in appeal, there is no question of disturbing the liability of the employer as fixed by the Commissioner. The cross-objections, however, have got to be allowed since the Commissioner has not properly appreciated that the deceased would have been earning Rs. 800/- per month. In that view of the matter, it has to be declared that the respondent-claimants are entitled to Rs. 27,000/- instead of Rs. 23,100/- and consequent rise in the penalty. The rate of interest is not disturbed since the same does justice in the present day. The appeal is thus dismissed with no orders as to costs.

