

(1999) 09 PAT CK 0029

In the Patna High Court

Case No : Misc. Appeal No. 20 of 1991 (R)

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Shanti Devi and Others

RESPONDENT

Date of Decision : 24-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 151
Motor Vehicles Act, 1988 — Section 147, 147(1)(b), 149, 167

Citation : (1998) 1 PLJR 7

Hon'ble Judges : G.S. Chaube, J

Bench : Single Bench

Advocate : Alok Lal, for the Appellant; D. Jerath, N.K. Pd. Singh and A.K. Sahani, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Chaube, J.—This appeal by New India Assurance Co. Ltd. is directed against order dt. 22.12.90 of the Commissioner, Workmen's Compensation at Hazaribagh directing the appellant to pay to the claimants before him a sum of Rs. 78824/- as compensation u/s 3 of the Workmen's Compensation Act, 1923 (hereinafter to be referred to as the Compensation Act) and his subsequent order dt. 27.2.91 for payment of Rs. 19706/- by way of penalty and Rs. 5911.80 ps. on account of interest in accordance with the provisions of section 4-A of said Act. The compensation proceeding bearing case No. 8. W.C.8/90 (C) was commenced on 15.1.90 before the Commissioner Workmen's Compensation at Hazaribagh on an application having been filed by the widow and minor children of late Mohan Ram of village Murpa within Mandu Police Station in the district of Hazaribagh, claiming a sum of Rs. 88,000/- compensation from respondent Nos. 5 and 6. It was stated by them that late Mohan Ram was driver of a dumper, a motor vehicle bearing registration No. BPM 2828 belonging to R. No. 6 Krishan Singh and at the relevant time had been hired to R. No. 5 Deoraj Singh a contractor of Kuju under Central Coalfields Ltd. In course of his employment as the driver of the said motor vehicle, late Mohan Ram met with a fatal accident sometime between

the 6th and 7th of November, 1989 within the local limits of Mandu police station in the district of Hazaribagh and his death came to be known on 8.11.89. He was drawing a monthly salary/wages of Rs. 1650/- and was then aged about 35 years. The notice of the claim application filed by the claimants who are R. Nos. 1 to 4 in the present appeal was served on R. Nos. 5 and 6.

2. As the fatal accident had taken place in course of employment as driver of a motor vehicle, in accordance with the provision of section 167 of the Motor Vehicles Act, 1988, read with the provisions of the Compensation Act, R. No. 5 appeared and took a plea that since he was not the owner of the vehicle he owed no liability. R. No. 6, the owner of the vehicle, however, admitted the liability in terms of the claim of the claimants/respondents by filing his report in Form EE of Workmen's Compensation Rules, 1992, which was taken to be his written statement.

3. From the record of the compensation proceeding it appears that in the meantime, the claimants had filed an application informing the Commissioner, Workmen's Compensation, that the vehicle in-question had been insured by the New India Assurance Co. Ltd., Main Road, Ramgarh Cantontment, namely, the present appellant, and filed a photocopy of certificate of insurance, according to which the policy of insurance was valid between 21.7.89 and 20.7.90. Consequently, the appellant was impleaded in the proceeding as one of the opp. parties and notice was sent to them under registered cover. When they did not appear, the impugned order dt. 22.12.90 was passed by the Commissioner, Workmen's Compensation, in view of the admission of the claim of the claimants/respondents by the owner - R. No. 6. It was admitted by the owner R. No. 6 that monthly wages of the deceased-workman who had died as a result of fatal accident in course of his employment as driver of the motor vehicle in question, and was aged about 35 years at the relevant time. In terms of section 4 of the Compensation Act, his wage was taken to be Rs. 1000/- and by multiplying 40% of the said amount that is Rs. 400/- with the relevant factor as mentioned in Schedule IV of the Compensation Act, that is, 197.06, the amount of compensation payable to the claimants was arrived at by the Commissioner at Rs. 78,824/-. In view of the fact that the owner of the vehicle was insured by the appellant and the policy of insurance was in force at the relevant time and in view of the provisions of section 147 of the Motor Vehicles Act, 1988, the Commissioner directed the appellant to pay the said amount of Rs. 78,824/- to the dependants of the deceased-workmen or deposit the same within 40 days from the date of the order. Notice was, accordingly, sent to the appellant. When the amount of compensation so awarded was not deposited within the period so fixed, which expired on 1.2.91, a fresh notice was directed to be issued to the appellant by order dt. 2.2.91 to deposit the amount of compensation by 27.2.91, failing which the appellant was also required to explain or show cause why order for payment of interest and penalty in terms of sub-section (3) of section 4-A of the Compensation Act, as it was in force at that time, be not made. On 25.2.91, the appellant appeared before the Commissioner, Workmen's Compensation at

Hazaribagh and took a plea that as the practice was to serve the notice of such orders at the nearest branch of the company and the same was sent to a branch at Ramgarh Cantt. (away from Hazarigagh), the order dt. 22.12.90 could not be complied with within time. However, by his order dt. 27.2.91, the Commissioner, Workmen's Compensation did not accept the explanation of the appellant who chose to abstain on that day, and directed them to pay a penalty of Rs. 19706/- being 25% of the amount of compensation awarded together with interest @ 6% per annum with effect from 10.12.89 amounting to Rs. 5911.80 Ps.

4. In the meantime, the present appeal was filed by the appellant in this court on 25.2.91 challenging the order dt. 22.12.90 awarding compensation to be paid by them to the claimants-respondents. At a later stage when the penalty and interest referred to above were in force, an application u/s. 151 of the Code of Criminal Procedure was filed by the appellant for staying the said order dt. 27.2.91 on the ground that the Commissioner had no jurisdiction to realise penalty from them.

5. It appears that the appellant deposited the entire amount of compensation with the Commissioner, Workmen's Compensation on 5.3.1991. Consequently, while admitting this appeal for hearing by order dt. 6.5.1991 this Court directed that the claimants/respondents shall not withdraw the amount deposited by the appellant before the Commissioner, Workmen's Compensation, as also the amount of penalty which they might deposit till the stay matter was finally heard and disposed of.

6. The appellants preferred the present appeal against the order dt. 22.12.90 awarding compensation of Rs. 78824/- primarily on the ground that the award was non-speaking and was made without the Commissioner being satisfied of service of notice on the appellant and it was also stated that the said order was made ex parte without ensuring the evidence regarding the income of the deceased workmen, his age and the fact whether he had died of fatal accident in course of his employment as driver of the vehicle of the insured owner (R. No.6). However, at a later stage the subsequent order imposing penalty and interest has also been impugned, in this appeal.

7. At the time of hearing, Mr. Alok Lal learned counsel for the appellant Co. tried to persuade me that the impugned order dt. 22.12.90 should be set aside and matter sent back to the Commissioner, Workmen's Compensation for re-hearing and order in accordance with law after giving the appellant an opportunity to file reply and adduce evidence. He submitted that the order was made ex-parte without hearing the appellant and, even, directing the respondents-claimants to adduce evidence in support of their claim. He further contended that in any event, the appellant cannot be fastened with the liability of paying or depositing the penalty as imposed by the Commissioner, Workmen's Compensation, by his order dt. 27.2.91.

8. Mr. A.K. Sahani, counsel for R. No. 6 supported the original award as well as

order imposing penalty and interest. While Mr. D. Jerath appearing for the claimants/respondents submitted that even though it is found that the appellants are not liable to pay or deposit the penalty as imposed in sub-section (3) of section 4A of the Compensation Act as it stood before amendment of 1995, the provision under Compensation Act being of beneficial nature, the order dt 27.2.91 should be allowed to stand.

9. Therefore, the points which arise for consideration in the present appeal are (i) whether the original order dt. 22.12.90 directing the appellant to pay a sum of Rs. 78824/- as compensation to the claimants/respondents is liable to be set aside on the ground that the same was not made in presence of the appellant and no evidence was taken in support of the claim and (ii) whether the appellant is liable to pay further amount of penalty and interest imposed on them by the Commissioner, Workmen's Compensation under his order dt. 27.2.91?

10. Point No. 1: In the present case, it is undisputed even by the appellant that late Mohan Ram was the driver of a motor vehicle belonging to R. No. 6 whom they had insured comprehensively in terms of section 147 of the Motor Vehicles Act, 1988 which had come into force w.e.f. 1.7.89. Undisputedly the policy of insurance covering the liability respecting the motor vehicle bearing registration No. BPM 2828 was valid for the period between 21.7.89 and 20.7.90. In other words it was in force on the day the driver of the said vehicle who was workman within the meaning of the Compensation Act, met with the fatal accident and died. Mr. Lal submitted that there was no evidence before the Commissioner, Workmen's Compensation, at least, none was adduced by the claimants/respondents, to show that the deceased workman had died in course of his employment; that his monthly wages was more than Rs. 1000/- and that his age was 35 years.

11. Workmen's Compensation Rules, 1925 was framed under rule acting power conferred on the Central Govt. u/s. 32 of the Compensation Act. By dint of Rule 41 of the said Rules certain provisions of the Code of Civil Procedure, 1908 including Order XV were made application (sic) to compensation proceeding pending before Commissioner of Workmen's Compensation. Order XV of the CPC provides for disposal of suits at the first hearing. Rule 1 of the said Order lays down that where at the first hearing of suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment. In the proceeding before the Commissioner, Workmen's Compensation arising out of the claim of the dependants of the deceased workman, the employer-owner of the motor vehicle appeared and presented his reply in Form EE admitting that the deceased was his driver aged about 35 years and was getting montly wages of Rs. 1650/-. He also purported to admit that the said workman died as a result of fatal accident which took place sometime between 6.11.89 and 7.11.89 in course of his employment. According to him when the deceased was driving the vehicle, he was shot dead by dacoits. Therefore, in view of such admission by none else than the employer-owner of

the vehicle himself who alone is liable to pay compensation under the Compensation Act, it becomes evident that the parties to the proceeding were not at issue at all. Order dated 22.10.90 also states that the employer-owner of the vehicle had admitted in his report/reply that the deceased Mohan Ram was the driver of his vehicle bearing registration No. BPM 2828 and in course of the employment, he met with a fatal accident and died on 9.11.90. It also stood admitted by him that the workman was aged about 35 years and was getting monthly wages of Rs. 1650/-. Accordingly, the amount of compensation was calculated in accordance with the rules laid down by section 4 of the Compensation Act.

12. It is admitted at the bar that there is absolutely no error in arriving at the amount of compensation on the relevant facts stated above. The record of the compensation proceeding discloses that the moment it came to the notice of the Commissioner, Workmen's Compensation that the owner of the vehicle was insured, the Insurance company was impleaded as one of the opp. parties and notice was directed to be sent to them. Even though in order dt. 31.10.90, the Insurance company has been described as National Insurance Co. Ltd., Ramgarh branch, on the title page of the record, opp. party No.4 has been described as New India Assurance Co. Ltd., Ramgarh Cantt. and, in fact, notice dt. 9.11.90 under registered cover had been sent to the Branch Manager of New India Insurance Co. Ltd., Ramgarh Cantt., Ramgarh, Hazaribagh. In view of the provision of Rule 19-A of Order V of the Code of Civil Procedure, which had been made applicable by dint of Rule 41 of the Workmen's Compensation Rules, if summons is sent to a defendant under registered cover with A/d and neither the acknowledgement is received nor the undelivered cover within 30 days from the date of issue, the summons shall be declared to have been duly served on the said defendant. The record of the court below show that the notice was sent to the appellant under registered cover on 9.11.90. Neither the acknowledgement thereof was received nor the undelivered registered cover was returned. The impugned order dt. 22.12.90 was made more than 30 days after the issuance of the notice to the appellant under registered cover. Therefore, the grievance of the appellant that order dt. 22.12.90 was made without ensuring that notice of the claimant was served on them and, therefore, that order is liable to be set aside has no merit.

13. In this connection it may be mentioned that the liability to pay compensation under the Compensation Act is, primarily, that of the employer-owner of the vehicle. The liability on the insurer is fastened in view of the provisions of section 147 of the Motor Vehicles Act, 1988 and the terms and conditions of the policy of insurance. There is no whisper by the appellant that in terms of the policy of insurance of the motor vehicle in-question, they owed no liability to indemnify the insured-owner. Even according to sub-section (2) of section 149 of the Motor Vehicles Act, 1988, the appellant insurer can only disclaim its liability on the ground that there was breach of conditions mentioned under clause (a) of subsection (2) or on the ground that the same was void on the grounds stated in

clause (b). No such plea has been taken by the appellant even in the memo of appeal. There is not even a whisper anywhere that the employer-owner of the vehicle was in collusion with the claimants. Therefore, simply because there was no specific declaration by the Commissioner, Workmen's Compensation that notice on the insurance company subsequently impleaded as a party to the proceeding shall be deemed to have been duly served by dint of lapse of a period of 30 days from the date of issue, the order dated 22.12.90 awarding compensation of Rs.78824/-, the rationale of which is not open to challenge for the reasons stated earlier, cannot be set aside.

14. Point No. 2: Section 4A of the Compensation Act provides for payment of compensation, when it is due and penalty for default. Sub-section (1) thereof lays down that compensation u/s. 4 shall be paid as soon as it falls due. Sub-section (2) provides that 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 workman as the case may be, without prejudice to the right of the workman to make any further claim. In other words, if the employer does not deny his liability for compensation claimed by the injured workman or dependants of the deceased workman to the extent claimed by them, he is duty bound to pay the compensation claimed. If he accepts the claim to only some extent, in that event, he is bound to make payment provisionally to the extent of the liability admitted by him. If he denies his liability in toto or to some extent, then the Commissioner, Workmen's Compensation is required to enquire into the claim and make a final order u/s. 4 of the Compensation Act. In default of making the payment of compensation within one month from the date it fell due either provisionally in terms of sub-section (2) or of that determined by the Commissioner, Workmen's Compensation, after enquiry or trial, sub-section (3) of section 4 as it stood then empowered the Commissioner, Workmen's Compensation to direct the employer to pay to the employee interest @ 6% per annum on the amount due, besides imposing penalty to the extent of 50% of the amount of compensation awarded, recoverable from the employer. Relying on the said provisions the Commissioner, Workmen's Compensation by his order dt. 27.2.91 directed the appellant to pay interest @ 6% per annum in view of the fact that the compensation was not paid within one month from the date it fell due and also foisted a penalty of Rs. 19,706/- being equivalent to 25% of the compensation awarded by his order dt. 22.12.90. The learned counsel for the appellant submitted that in view of the decision of the apex court rendered in the case of Ved Prakash Garg vs. Premi Devi and others, 1998 Accidents Claims Journal, page 1, the appellant is liable only to pay interest @ 6% per amount (sic) on the amount of compensation awarded by order dt. 22.12.90 but not the amount of penalty foisted by the Commissioner, Workmen's Compensation.

15. In the case referred to above, in similar circumstance, a question had arisen whether the insurance company was liable to pay interest as well as penalty

imposed under sub-section (3) of section 4A of the Compensation Act. Adverting to the provisions of section 4A of the Compensation Act as well as section 147 of the Motor Vehicles Act, 1988, the apex court had observed that on a conjoint operation of the relevant schemes of the aforesaid twin Acts, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest thereon if ordered by the Commissioner to be paid by the insured employers, because the liability to pay compensation under the Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of, his employment and such accident is also covered by the statutory coverage contemplated by section 147 of the M.V. Act read with the identical provisions under the very contracts of insurance reflected by the policy which would make the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer u/s 3 read with section 4-A of the Compensation Act. The apex court has further observed that so far as interest is concerned, it is almost automatic once there is default on the part of the employer in paying the compensation within permissible limit of one month from the date it became due. It is a statutory alongation of the liability of employer to make good the principal amount of compensation within permissible time limit within which interest may not run, but otherwise the liability of paying interest on delayed compensation will ipso facto follow. In this connection it is worthwhile to mention that even according to sub-section (1) of section 149 of the Motor Vehicles Act, 1988, the liability of the Insurance company extends not only to the liability of the insurer to pay compensation, but also to "any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgements".

16. However, the apex court has held in the said case that same consequence will not follow in a case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstance contemplated by subsection (3) of section 4A of the Compensation Act. The apex court has further observed that so far as the penalty amount is concerned, it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term "liability incurred" by the insured employer as contemplated by the proviso to section 147(1) (b) of the M.V. Act, as well as the terms of the insurance policy. The apex court has further observed on this point in the following terms:

On the aforesaid interpretation & these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act

alongwith interest thereon, if any, as imposed by the Commissioner, under sections 3 and 4 A(3) (a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by section 4-A(3) (b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner.

17. In the present case, employer-owner (R. No. 6) did not dispute his liability to pay the compensation by dint of admitting that the deceased workman who was his employee as the driver of his motor vehicle, died as a result of and in course of employment as such; that he was getting a salary of Rs. 1650/- per month and that he was then aged about 35 years. Therefore, he was duty bound to make compensation to the claimants-respondents within one month from the date it fell due. The compensation became payable the day workman died due to the fatal accident. It is admitted that this fact came to be known on 9.11.89. Therefore, it was obligatory on the part of R. No. 6 to pay the compensation within one month with effect from 9.11.89. If he failed and the Commissioner of Workmen's Compensation chose to impose penalty in terms of sub-section (3) of section 4-A of the Compensation Act, it was clearly the liability of the employer not to be shared by the insurance company in terms of the policy of insurance. Unfortunately, the Commissioner, Workmen's Compensation decided to foist even the penalty on the insurer, namely, the appellant which they are not at all liable to pay, even though they cannot escape the liability to pay interest @ 6% per centum annum on the amount of compensation with effect from 10.12.89 as ordered by the Commissioner, Workmen's Compensation till the date of deposit of the amount by them. In the result, the appeal succeeds in part and is accordingly allowed to the extent that the appellant shall pay to the claimants respondents the entire amount of Rs. 78824/- awarded in their favour by order dt 22.12.90 together with interest @ 6% per annum on the said amount with effect from 10.12.89 till the date of deposit. As regards the amount of penalty imposed, the same shall not be enforceable against the appellant, but the same shall be enforceable against R. No. 6 the employer-owner of the vehicle. In the circumstance of the case, the parties shall bear their costs of this appeal.