

**(2015) 05 SHI CK 0144**  
**In the High Court Of Himachal Pradesh**  
**Case No : F.A.O. (WCA) No. 48 of 2013**

New India Assurance Co. Ltd.

APPELLANT

Vs

Sommaya Shaipy and Others

RESPONDENT

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**Date of Decision :** 29-05-2015

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 17

**Citation :** (2015) 147 FLR 108 : (2015) 3 LLJ 122

**Hon'ble Judges :** Mansoor Ahmad Mir, C.J

**Bench :** Single Bench

**Advocate :** B.M. Chauhan, for the Appellant; V.B. Verma and Bhupinder Thakur, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

Mansoor Ahmad Mir, C.J—Subject matter of this appeal is award dated 29.11.2012, Court made by the Employees Compensation Commissioner (I), Palampur, District Kangra, H.P. in W.C. Petition RBT No. 17/11/2008, titled Som Maya Shaipy and Others v. New India Assurance Co. Ltd. and Another, whereby compensation to the tune of Rs. 3,94,120/-, was awarded in favour of the petitioners/claimants and insurer/appellant came to be saddled with the liability, hereinafter referred to as "the impugned award", for short, on the grounds taken in the memo of appeal. The claimants and owner have not questioned the impugned award on any ground, thus it has attained finality so far it relates to them.

2. The learned counsel for the insurer/appellant has argued that the Commissioner under the Workmen's Compensation Act, has fallen in an error in saddling the insurer with the interest liability and the amount awarded is not in accordance with the mandate of the Workmen's Compensation Act (for short "the Act").

3. In order to determine both these issues, it is necessary to give a flash-back of

the case, the womb of which has given birth to the present appeal.

4. The deceased was a workman under the employment of respondent No. 2. It is averred that on 3.4.2008, deceased slipped near the site of work at Avah Project, village Spadu PO Kandbari Tehsil Palampur District Kangra, H.P. where the Anubhav company was carrying out construction work of the Electric Power Project and rolled down in the nullah, sustained the injuries and succumbed to the injuries in the hospital. He was being paid Rs. 100/- per day as wages and Rs. 50/- per day as diet money by respondent No. 2.

5. The claimants filed petition under the Workmen's Compensation Act, for the grant of compensation to the tune of Rs. 5,00,000/-, as per the break-ups given in the petition.

6. The insurer contested the claim petition and owner-respondent No. 2 admitted the claim petition. It is apt to reproduce paras 6 and 7 of the reply filed to the claim petition, by respondent No. 2 herein:

"6. That the contents of para No. 6 of the petition are admitted to the extent that the deceased's death is the direct result of said accident and having taken place during the course of his employment and rest of the para is not admitted for want of knowledge. The petitioner has to prove the same.

7. That the contents of para No. 7 of the petition are admitted to the extent that the deceased was in receipt of Rs. 100/- per day from the Opp. Party No. 2 and Rs. 50/- daily towards diet money, but the contents of rest of the para are wrong and hence denied in toto."

7. Following issues came to be framed by the Commissioner:

(i) Whether deceased Nima Lamba was engaged as a mason by respondent No. 2 at Avah Project, village Spadu, PO Kandbari Tehsil Palampur District Kangra, H.P. OPP

(ii) Whether Nima Lamba slipped near the site of work and rolled down into a deep nala and sustained injuries on his neck and head, as alleged? OPP

(iii) Whether Nima Lamba died on 7.4.2008 as a result of injuries sustained by him near the site of work, as alleged? OPP.

(iv) Whether Nima Lamba expired at the age of 35 years, as alleged? OPP

(v) Whether the petitioners are entitled for the compensation as claimed? OPP.

(vi) Whether the petition is bad for nonjoinder of necessary parties? OPR-1.

(vii) Whether respondent No. 2 has not entered into any agreement with the Anubhav Company? OPR-1

(viii) Whether the respondent No. 2 has violated the terms and conditions of the W.C. Policy, as alleged? OPR-1.

(ix) Whether Nima Lamba did not expire during the course of his employment?

(x) Relief.

8. The claimants led evidence, oral as well as documentary. The insurer and owner have not led any evidence. Thus; the evidence led by the claimants remained un-rebutted. The factum of insurance is admitted.

9. The insurer has not taken a defence in the reply that the insurer is not liable to pay interest but for the first time, it has been raised in the memo of appeal.

10. The question is whether the insurer has proved the terms and conditions of the insurance contract whereby interest liability is excluded. Neither such a plea was raised nor any evidence was led by the insurer to prove the said factum. Thus, it cannot lie in the mouth of the insurer that it is not liable to pay interest, as per insurance contract. To fortify his stand, the learned counsel for the insurer has placed reliance on the judgment delivered by the apex Court in case *New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another*, (2006) 2 ACC 539 : (2006) ACJ 1699 : AIR 2006 SC 1926 : (2006) 131 CompCas 250 : (2006) 3 CTC 166 : (2006) 109 FLR 1074 : (2006) 5 JT 228 : (2006) 2 LLJ 782 : (2006) 143 PLR 727 : (2006) 5 SCC 192 : (2006) SCC(L&S) 973 : (2006) 1 SCR 444 Supp : (2006) 3 SLJ 448 : (2006) AIRSCW 2352 : (2006) 4 Supreme 350 . It is apt to reproduce paras 15 and 24 of the said judgment herein:

"75. The terms of a contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provisions of the Insurance Act. In terms of the provisions of the Insurance Act, an insured is bound to pay premium which is to be calculated in the manner provided for therein. With a view to minimize his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in law.

16 to 23. ....

24. Section 17 of the Workmen's Compensation Act voids only a contract or agreement whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment and insofar as it purports to remove or reduce the liability of any person to pay compensation under the Act. As my learned brother has noticed, in the Workmen's Compensation Act, there are no provisions corresponding to those in the Motor Vehicles Act, insisting on the insurer covering the entire liability arising out of an award towards compensation to a third party arising out of a motor accident. It is not brought to our notice that there is any other law enacted which stands in the way of an Insurance Company and the insured entering into a contract confining the obligation of the Insurance Company to indemnify to a

particular head or to a particular amount when it relates to a claim for compensation to a third party arising under the Workmen's Compensation Act. In this situation, the obligation of the insurance company clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. Unlike the scheme of the Motor Vehicles Act, the Workmen's Compensation Act, does not confer a right on the claimant for compensation under that Act to claim the payment of compensation in its entirety from the insurer himself. The entitlement of the claimant under the Workmen's Compensation Act is to claim the compensation from the employer. As between the employer and the insurer, the rights and obligations would depend upon the terms of the insurance contract. Construing the contract involved here, it is clear that the insurer has specifically excluded any liability for interest or penalty under the Workmen's Compensation Act and confined its liability to indemnify the employer only against the amount of compensation ordered to be paid under the Workmen's Compensation Act. The High Court, was therefore, not correct in holding that the appellant-Insurance Company, is also liable to pay the interest on the amount of compensation awarded by the Commissioner. The workman has to recover it from the employer."

11. The judgment relied upon by the learned counsel for the appellant is not applicable to the facts of the present case for the reasons that neither the insurer has pleaded nor proved the terms and conditions contained in the insurance contract in order to claim that it is not liable to pay interest.

12. I have gone through the insurance policy Ext. R-1. No such condition is contained in the said policy.

13. Thus, the Tribunal has rightly directed the insurer to satisfy the award with interest.

14. The learned counsel for the insurer has argued that the amount awarded is excessive.

15. I have gone through the petition and the reply filed by the owner. The amount awarded cannot be said to be excessive and not in tune with the Act. Respondents have admitted the claim of the claimants and insurer has to indemnify the award.

16. Having said so, the appeal is dismissed. The Registry is directed to release the amount, if received in the Registry, in favour of the claimants, strictly in terms of the conditions contained in the impugned award, through payee's cheque account. Send down the records, alongwith a copy of this judgment.