
(1997) 02 MP CK 0008
In the Madhya Pradesh High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Tarabai and Others

RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

Employees Compensation Act, 1923 — Section 4, 4A
Motor Vehicles Act, 1988 — Section 147

Citation : (1997) 2 ACC 88

Hon'ble Judges : R.D. Shukla, J; Jayant Govind Chitre, J

Bench : Division Bench

Judgement

R.D. Shukla, J.—The following question of law has been referred to by learned Single Judge:

Whether the Insurance Company should be held liable for the penalty arising under the Workmen's Compensation Act, u/s 4A thereof.

2. This Division Bench has been constituted to answer the question as there is difference of opinion between Judges of this High Court as to whether Insurance Company can be saddled with the liability of payment of penalty?

3. Section 4A of the Workmen's Compensation Act, 1923 reads as follows:

4-A. Compensation to be paid when due and penalty for default. -- (1)
Compensation u/s 4 shall be paid as soon as it falls due.

(2) 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.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest(r) 6 per cent per

annum on the amount due together with, if in the opinion of the Commissioner there is no justification for delay, a further sum not exceeding fifty percent of such amount, shall be recovered from the employer by way of penalty.

4. We have heard learned Counsel Mr. M.L. Dhupar and Mr. A. H. Khan for the Insurance Company and Mr. Samvatsar and Mr. G.K. Neema for the claimants i.e., legal heirs of the worker.

The contention of the learned Counsel for the appellant Insurance Company is that the Insurance Company is liable to make good the loss to the extent of compensation awarded and not for the penalty, as the penalty is imposed because of the default on the part of the employer. The second contention of the learned Counsel of the appellant is that the policy covers the risk of accident and not the delay caused and negligence in defending the case by the employer. It has further been submitted that the liability of payment of compensation is co-extensive for the fault (accident) and not for default i.e., negligence of the employer. The question of opportunity of hearing before imposing the penalty has also been raised by the Counsel for the appellant.

In opposition of the contention of the learned Counsel for the appellant learned Counsel for the claimants, on the other hand, submitted that the Insurance Company covers the entire risk. The poor claimants cannot be saddled with the responsibility of recovering the amount of penalty from the employer. It has further been submitted that if there is any default of employer the Insurance Company may separately claim for recovery of money from the employer, but the Company cannot be allowed to disown the liability of payment so far as amount of compensation awarded to the legal heirs of the worker is concerned. It has also submitted that as the liability is co-extensive the same is co-extensive not only in the matters of fault, but in the matter of default occasioned by employer also.

5. Proviso to Section 95(b)(ii) of the Motor Vehicles Act, 1939 (Proviso to Section 147(b)(ii) of the New Motor Vehicles Act, 1988) provided that a policy shall not be required to cover the liability in respect of death, arising out of and in the course of his employment, of the employee of a person insured by the policy arising out of and in the course of his employment (other than a liability arising under the Workmen's Compensation Act, 1923).

Thus, this goes to show that the Insurance Co. would otherwise be not liable except under the Workmen's Compensation Act.

6. We have perused the policy issued by the Insurance Co. An extra premium for the same is charged. The Condition No. 3 provides that in consideration of the payment of an additional premium the Company shall indemnify the insured against his legal liability as under:

The Workmen's Compensation Act, 1923 and subsequent amendment of that Act prior to the date of this endorsement the fatal Accidents Act, 1855 or at Common

Law.

In respect of personal injury to any paid driver, (or cleaner or conductor or persons employed in loading and/or unloading) while engaged in the service of the insured in such occupation in connection with the Motor Vehicle and will in addition be responsible for all costs and expenses incurred with its written consent.

This goes to show that the Insurance Company is liable to indemnify the employer on payment of additional premium. Thus, the liability of Insurance Company is co-extensive with the employer. Whatever liability in respect of death or injury to the employer arises against the employer the same has to be indemnified by the Insurance Co.

7. However, the further condition makes it obligatory on the insured to take all responsible precautions to prevent accident and shall comply with all statutory obligations. Thus, the employer is also required to comply with all statutory obligations.

Section 4A of the Workmen's Compensation Act makes it imperative on the employer to make payments as soon as it falls due and the payment would naturally fall due immediately after the death of the employee. It further provides that where employer does not accept the liability for compensation he shall make provisional payment based on extent of liability which he accepts and the same shall be deposited with the Commissioner.

Section 4A(3) of the Workmen's Compensation Act further provides that if the employer fails to make payment within one month, interest in addition to the compensation may be directed to be paid. It also provides that where delay has been caused and there is no justification for delay the Commissioner may impose a penalty not exceeding 50% of the amount of compensation. Therefore, it is necessary for the Commissioner for Workmen's Compensation to give an opportunity to the employer and to the Insurance Co. to explain the delay caused. No penalty ought to be imposed unless the employer and the Insurance Co. have been given an opportunity for explaining the delay. It is after affording opportunity to explain and after consideration of explanation, if any, the Commissioner is empowered to impose penalty. Thus, imposition of penalty without affording opportunity to the employer and the Insurance Co. would not be legal.

The condition of the policy, though, required compliance of statutory liability, but it nowhere provides that the Insurance Co. shall not be liable to indemnify the employer for the delay caused in making payment and, therefore, the Insurance Co. would initially be liable to make payment of penalty imposed under the Act. However, if the delay has been caused solely because of remissness and negligence of the employer the Insurance Co. can get it recovered from the employer. However, for recovery of amount of penalty paid by the Insurance Co. shall have to be made by due process of law. The Insurance Co. may take

appropriate steps for the recovery of the amount paid by way penalty.

8. It is noteworthy that it is easier to get the money recovered from the Insurance Co. These provisions under Workmen's Compensation Act are benevolent provisions made in favour of the workers and heirs or such workers who died during the course of employment and, therefore, the workers or heirs so suffering should not be compelled to roam about for recovery of the money and, therefore, the initial payment shall have to be directed to be made by the Insurance Co. and the Insurance Co. may, thereafter, if the penalty has been imposed because of the delay caused by the employer, recover the same by due process of law or by taking appropriate executive actions.

9. Thus, we answer the reference in the affirmative and further hold that before imposing penalty, employer and the Insurance Co. will have to be given an opportunity for the explanation of the delay and if the employer is solely responsible for the delay the Insurance Co. may take appropriate steps for recovery of the amount of penalty from the employer.

Now, both the appeals i.e. present appeal and connected M.A. No. 166/89 shall stand disposed of and shall be listed before the learned Single Judge for disposal according to law. Parties are directed to appear, before the learned Single Judge on 5.3.1997. No further notice would be required to be issued in the case.