
(2017) 03 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : 169 of 2008

New India Assurance Company Ltd.

APPELLANT

Vs

Bhim Chhring Maghar & ors.

RESPONDENT

Date of Decision : 06-03-2017

Acts Referred:

[Workmens Compensation Act, 1923](#), [Section 4-A\(3\)](#), [Section 4-A](#)

Citation : (2017) 03 SHI CK 0018

Hon'ble Judges : Dharam Chand Chaudhary

Bench : Single Bench

Advocate : B.M. Chauhan, Bhoop Singh, Ankur Sood

Judgement

1. In this appeal, award dated 6.9.2007 passed by learned Commissioner under Workmen's Compensation Act in case No. 2(2)Comp./2006 is under challenge. This appeal has been preferred by the insurer-New India Assurance Company.

2. The grounds of challenge in a nut shell are that learned Commissioner below has erred in law while directing the insurer respondent No. 2-appellant to pay the awarded amount together with interest @9% per annum from the date of accident. Also that no liability to pay the interest could have been fastened upon the insurer/respondent No. 2-appellant in violation of the terms and conditions of Workmen's Compensation Insurance Policy in which the liability to pay interest and penalty by the insured is not covered. Learned Commissioner below as such also stated to have erred in law in imposing the penalty upon the insurer-appellant under Section 4-A of the Workmen's Compensation Act.

3. Respondent No. 1 herein is the widow, whereas respondents No. 2 and 3 minor son and daughter (hereinafter referred to as petitioners-claimants) respectively, of deceased workman Dhaba Babu Rana. The deceased was employed as a labourer by respondent No. 4 Des Raj, a Government contractor. On 11.5.2005 the deceased was working as Beldar on Harsarkugti road in district Chamba at Hulanni Nallah. A boulder slid from hill side and hit the deceased

on his head. As a result thereof he died on the spot itself. The deceased was 26 years of age and earning Rs.2400/- per month by way of his wages at the relevant time. Since he died during the course of his employment, therefore, Rs.10,00,000/- was claimed as compensation by petitioners-claimants.

4. Learned Commissioner below on the basis of the pleadings of parties had framed the following issues: i) What was the monthly wages of the deceased.

ii) What was the age of the deceased at the time of death?

iii) Whether the deceased was comprehensively with the opposite party?

iv) If yes, the amount of compensation to be paid by the respondent No. 2.

5. All the issues were answered in favour of the claimants-petitioners and as a result thereof a sum of Rs.2,58,336/- awarded as compensation to them. Besides, a sum of 1,52,313/- was also awarded towards interest on the awarded amount as directed by learned Commissioner below. On failure of the insurer-appellant to deposit the awarded amount together with interest within a month from the date of award, to pay the penalty as provided under Section 4-A of the Act.

6. This appeal has been admitted on the following substantial questions of law:

1. Whether the Id. Commissioner below has erred in law in fastening the liability of payment of interest upon the appellant from the date of accident. Have not the Id. Commissioner below overlooked the Workmen's Compensation Insurance Police-(law)(s) 1(i) clause wherein the interest and penalty is not covered.

2. Whether the Id. Commissioner has erred in law in directing the appellant to pay penalty as per Section 4-A of the Workmen Compensation Act in its failure to deposit the awarded amount within thirty days from the date of announcement of award.

7. On hearing Mr. B.M. Chauhan, Advocate, learned counsel for insurer-appellant and Mr. Bhoop Singh, Advocate on behalf of respondent-claimant No. 1 and Mr. Ankur Sood, Advocate, Court guardian on behalf of minor respondents No. 2 and 3 and on perusal of the entire record, the first substantial question of law not at all arise for determination in this appeal for the reason that the so called terms and conditions of Workmen Compensation Insurance Policy exempting the insurer respondent No.2-appellant from its liability to pay the interest on the awarded amount has not been seen the light of day being not produced in evidence during the course of trial of the claim petition before learned Commissioner below. Therefore, when there is no material available on record, it cannot be said that appellant-respondent No. 2 is not liable to pay the interest as awarded by learned Commissioner on the awarded amount.

8. If coming to the second substantial question of law the same is covered in favour of the insurer-appellant by the judgment of Apex Court in (1997) 8 Supreme Court Cases 1, titled Ved Prakash Garg versus Premi Devi and others as

it has been held in this judgment that the liability to pay the amount of penalty under Section 4-A(3) of the Act is that of the insured and not that of the insurer. Therefore, the impugned order qua imposition of penalty though vague and cryptic as the Commissioner below has not determined the percentage and extent of penalty, is not legally sustainable. Even if any penalty was to be imposed in this case, the same should have been imposed upon the insured respondent No. 4 and not against the insurer-appellant. Therefore, that part of the impugned award is not legally sustainable, hence quashed.

9. In view of the foregoing reasons, this appeal partly succeeds. The impugned award to the extent of holding insurerappellant liable to pay the amount of penalty is quashed and set aside. The same shall stand modified accordingly. The appeal is disposed of.