
(2021) 02 OHC CK 0010
In the Orissa High Court
Case No : F.A.O. No. 32 Of 2010

Nihar Ranjan Mohanty

APPELLANT

Vs

Jasobanti Bag & Others

RESPONDENT

Date of Decision : 02-02-2021

Acts Referred:

Workmen's Compensation Act, 1923 — Section 3, 4(A), 4A(a), 4A(2), 4A(3), 4A(3)(a), 4A(3)(b), 17, 22, 30
Motor Vehicles Act, 1988 — Section 147, 147(1)(b)

Citation : (2021) 02 OHC CK 0010

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : B.N.Rath, P.K.Chinara, A.K.Jena, T.N.Choudhury, N.Swain, B.K.Mohapatra, A.K.Mohanty, M.C.Nayak, D.C.Dey

Final Decision : Allowed

Judgement

Biswanath Rath, J

1. On consent of parties, both the matters are taken up together and decided by this common judgment. FAO No.32/2010 is an Appeal at the instance

of the owner, whereas FAO No.33/2010 is at the instance of the United Insurance Company Ltd. involving a common judgment passed by the

Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner, Sambalpur in W.C.Case No.11 of 2004. FAO No.33/2010 at

the instance of the United Insurance Company involves saddling of liability of the principal amount on the Insurance Company, Sri Mohanty, learned

counsel appearing for the Insurance Company taking through the grounds taken in paragraphs-4, 5 & 6 disputed the status of the deceased being an

employee of the Establishment. FAO No.32/2010 at the instance of the owner challenging the judgment in the above W.C. Case where the owner

confined its challenge to burdening of interest under Section 4-3(A)(a) of the Act, 1923 on the vehicle owner, the Appellant in this Appeal.

2. Entering into common argument on the request of both the Counsel, this Court finds, the case involves Section 22 of the Workmen's

Compensation Act, 1923, where the claimants have claimed compensation for the accidental death of one Santosh Bag while in employment as a

Helper in a Dumper under Opposite Party No.1 therein, one Nihar Ranjan Mohanty. The claim further reveals, the deceased, Santosh Bag was in

employment under Opposite Party No.1, the owner indicated herein above, involving a Dumper bearing Regn. No.OR-15-6009, as a workman/Helper

and he met with a fatal accident on 8.1.2004. The claim petition was filed involving cause of death in course and arising out of service and taking into

account the monthly remuneration of the deceased, as Rs.3200/- per month. Owner on his appearing filed written statement. In his written statement,

it is claimed that the Dumper was engaged in Dunguri Limestone Quarry. On 8.1.2004 the deceased-workman while discharging his duty in his above

Dumper met with an accident and died due to pressing by wheel of the Dumper and fall of limestone on his head. It is claimed, soon after the

accident, he was removed from the spot to the Government Hospital, Bargarh, where he succumbed to his injury. The owner also admitted that

involving the same U.D. Case No.1 of 2004 was registered in the Bargarh Police Station. In the written statement, the owner did not dispute the

monthly remuneration, as claimed by the claimants. In filing photocopy of the Insurance Policy, the owner admitted coverage of the claim involving the

Insurance Policy involved therein. Insurance Company on its appearance, as Opposite Party No.2 therein filed written statement and while denying

the claim of the claimants also attempted to deny the employment of the deceased with the owner, Opposite Party No.1. Insurance Company also

raised a dispute with regard to wages, as claimed by the legal heirs of the deceased. The Insurance Company also attempted to deny the injury to

have been sustained by the deceased not involving while working under the owner. Ultimately, the Insurance Company claimed no liability on it.

3. Based on the pleadings of the respective parties, the Commissioner for Workmen's Compensation-cum-Assistant Labour

Commissioner, Sambalpur framed the following issues :-

i) Whether the deceased Santosh Bag was a "workman" as defined under the provisions of the W.C.Act 1923 ?

ii) Whether the above deceased met with accident in the course of and out of his employment ?

iii) Whether the applicants are entitled to compensation as claimed or any part thereof ?

iv) Whether the opposite parties are liable to pay the compensation as is due ? If so, by whom the amount is payable ?

v) Whether the applicants are entitled to interest on the amount of compensation ? If so, by whom payable ?

4. Advancing his submission, Sri Mohanty, learned counsel for the Insurance Company in FAO No.33/2010 on reiteration of the

plea taken before the authority below and taking this Court to ground nos.5 & 6 of the Appeal submitted that involving a criminal case after thorough

investigation, Final Form has been submitted indicating that the deceased was working in the mines and claimed that the claimants also rely on such

document.

Further the impugned judgment is also challenged on the premises that there is no single scrap of paper available in the whole process to establish the

wages of the deceased.

5. To oppose this claim, learned counsel for the claimants as well as the owner of the vehicle taking this Court to the recording of discussion on the

evidence and the materials available on record strongly refuted the claim of the Insurance Company and requested for dismissal of the Appeal at the

instance of the Insurance Company.

6. This Court considering the rival contentions of the parties finds, even though the Insurance Company raised ground no.5 involving the Final Form,

neither the evidence nor the discussion of the Commissioner could find any strength in such claim of the Insurance Company. Further this Court on

perusal of the impugned judgment involved herein finds, for the discussions and reasons of the Commissioner, there remained no doubt that the

deceased not only was an employee under the owner, the appellant in FAO No.32/2010 at the relevant point of time but there is ample material also

available to establish that the deceased was an earner and payment to the deceased was being made by the owner involved herein, which is being

clearly established through the trial process. Looking to the challenge of the Insurance Company on the quantum, this Court reading through the

discussions on evidence and the materials available on record finds, there is no strong material to suggest the rate of wages being received by the

deceased except there is some support through oral evidence by the owner with regard to payment to the deceased.

7. This Court for no material establishment of the wages of the deceased at the relevant point of time, however taking into consideration that he was a

driver and taking into consideration of long lapse of time, instead of remitting the matter to the Commissioner for re-adjudicating the question of

appropriate compensation deems it appropriate to reduce the compensation of Rs.2,86,476/- to Rs.2,50,000/- (rupees two lakh fifty thousand) along

with further observation made therein in the award involving the Insurance Company. For modification in the compensation aspect and considering

that the whole compensation amount since remains in deposit with the Commissioner, the claimants be released with compensation of Rs.2,50,000/-

with interest accrued on it and balance compensation with interest accrued on it be released in favour of the Insurance Company.

8. Now coming to challenge in FAO No.32/2010, this Court finds, filing this Appeal, the owner involved herein attacked the judgment impugned solely

on the premises that for the decision of the Honâ??ble Apex Court in 1998(I) TAC No.215, paragraphs-14 & 17 comes to the Appellantâ??s

rescue so as to shift the interest burden under Section 4-A(3)(a) to the Insurance Company. This Court here finds, Paragraphs-14 & 17 of the

aforesaid judgment read as follows :

â?? 14. On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, 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. Reason for this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Workmen's

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. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles 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 under Section 3 read with Section 4-A of the Compensation Act. All these

provisions represent a well-knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier

while discussing the scheme of Section 4-A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one

month it is not paid by the employer then as per Section 4-A(3)(a) interest at the permissible rate gets added to the said principal amount of compensation as the

claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make

good his liability for the benefit of the claimants whose breadwinner might have either been seriously injured or might have lost his life. Thus so far as interest is

concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No

element of penalty is involved therein. It is a statutory elongation of the liability of the employer to make good the principal amount of compensation within

permissible time-limit during which interest may not run but otherwise liability of paying interest on delayed compensation will ipso facto follow. Even though the

Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section 4-A(3) (a) still

the liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally liable to be discharged

by the insured employer. Consequently such imposition of interest on the principal amount would certainly partake the character of the legal liability of the insured

employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest

made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not dehors it. It, therefore,

cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay

compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him

once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer. No question of

justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated

under Section 4-A(3) may start running for the purpose of attracting interest under sub-clause (a) thereof in case where provisional payment has to be made by the

insured employer as per Section 4-A(2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his

liability as a whole under circumstances enumerated by us earlier then Section 4-A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in

directing payment of interest in such contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by

the Commissioner would remain perfectly justified on the scheme of Section 4-A(3)(a) of the Compensation Act. But similar consequence will not follow in case where

additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by Section 4-

A(3)(b) of the Compensation Act after issuing show-cause notice to the employer concerned who will have reasonable opportunity to show cause why on account of some justification on his part for the delay in payment of the compensation

amount he is not liable for this penalty. However, if ultimately, the Commissioner after

giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and

because of his unjustified delay and due to his own personal fault he is held responsible for the delay, then the penalty would get imposed on him. That would add a

further sum up to 50% on the principal amount by way of penalty to be made good by the defaulting employer. So far as this penalty amount is concerned it cannot

be said that it automatically flows from the main liability incurred by the insured employer under the Workmen's 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 Motor Vehicles Act as well as by the terms of the insurance policy found in provisos (b) and (c) to sub-section (1) of Section II

thereof. On the aforesaid interpretation of 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 along with

interest thereon, if any, as imposed by the Commissioner, 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. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the

negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3)(a) of the Compensation Act. So far as

additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.â??

9. To the above submission of the counsel for the appellant the owner, Sri Mohanty, learned counsel for Respondent No.7 herein submits that for no inclusion of interest aspect in such cases in the Insurance agreement between the Contracting parties interest burden under the provision at Section 4-

A(3)(a) cannot be shifted to Insurance Company. This Court here also takes into account another decision of the Honâ??ble Supreme Court dealing

this aspect vide 2006(5)SCC 192 and finds, the Honâ??ble Supreme Court in paragraphs 14, 15, 19, 21, 23 & 24 has observed as follows:-

â??14. By reason of the provisions of the Act, an employer is not statutorily liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor

Vehicles Act does not have a statutory liability. Section 17 of the Act does not provide for any restriction in the matter of contracting out by the employer vis-Ã -vis

the insurer.

15. 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.

19. As indicated hereinbefore, a contract of insurance is governed by the provisions of the Insurance Act. Unless the said contract is governed by the provisions of

a statute, the parties are free to enter into a contract as for their own volition. The Act does not contain a provision like Section 147 of the Motor Vehicles Act. Where

a statute does not provide for a compulsory insurance or the extent thereof, it will bear repetition to state that the parties are free to choose their own terms of

contract. In that view of the matter, contracting out, so far as reimbursement of amount of interest is concerned, in our opinion, is not prohibited by a statute.

21. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. The appellant is not liable for the

interest. However, we make it clear that the employer shall be liable to pay the amount of interest to the claimant. In the facts and circumstance of the case, there shall

be no order as to costs.

23. The law relating to contracts of insurance is part of the general law of contract. So said Roskill, L.J in *Cehave v. Bremer*. This view was approved by Lord Wilberforce in *Reardon Smith v. Hansen Tangen* (All ER p. 576h) wherein he said:

“It is desirable that the same legal principles should apply to the law of contract as a whole and that different legal principles should not apply to different branches of that law.” A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their

primary, natural, ordinary and popular sense (See Conlivaux’s Law of Insurance, 7th Edn., para 2-01.) A policy of insurance has therefore to be construed like

any other contract. On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had

undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under the Workmen’s

Compensation Act. Unless one is in a position to void the exclusion clause concerning liability for interest and penalty imposed on the insured on account of his

failure to comply with the requirements of the Workmen’s Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts.

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.

10. Looking to the above legal position being settled by Hon'ble Apex Court it is now seen, such dispute has to be considered looking to the

condition in the Insurance agreement between the contracting parties. Looking to

the pleading of the respective parties i.e. the Insurance Company and the owner this Court finds, owner appearing as Opposite Party No.1 in the authority below in its written statement submitted that he is the owner of the vehicle / Dumper bearing Registered No.OR-15-6009. On 8.01.2004 while deceased workman was discharging his duty in the above dumper met with an accident and died in course and arising out of work. Owner has intimated the fact of accidental death of the deceased to the United Insurance Company, Bargarh to do the needful. Owner also admitted that the deceased was drawing wages @ Rs.1,750/- per month, i.e., @ Rs.57/- per day. Owner also claimed that he had paid additional premium. Filing copy of the Insurance Policy No.034201/31/01413 issued by Opposite Party No.2 Insurance Company valid in between 6.12.2003 to 5.12.2004 owner claimed that the Insurance Company is liable to clear the entire liability. Similarly Opposite Party No.2 the Insurance Company on filing W.S. while denying the employment of deceased with Opposite Party No.1 also objected to the claim of accident involved here arising out of and in course of employment. Opposite Party No.2 however admitted the vehicle claimed to have involved in the accident had the valid insurance vide above policy. Opposite Party further submitted that the matter being adjudicated the Insurance Company has already deposited a sum of Rs.1,45,828/- with competent authority. In the Trial the authority has come to hold that the accident arose out of and income of employment, the Authority had also held the deceased is well covered by the above Insurance Policy and has thus come to hold that the claimant will be entitled to particular compensation which is however reduced to Rs.2,50,000/- by this Court in disposal of F.A.O No.33/2010 taken up along with this appeal. It is also recorded that the fact of accident was also intimated to the establishment, copy of its letter No.MA/553/04 No.DL : MM:147 dt.16.01.2004, filed and marked as Ext.-A in the trial proceeding. Owner also filed copy of letter of intimation to the Insurance Company vide M.A/553/04 dt.27.01.2004 and marked it as Ext.B in the Trial proceeding. It appears, vide F.A.O. No.33/2010 the insurance contested only on the aspect of quantum being at higher side and there is modification in the amount of compensation by this Court in disposal of F.A.O. No.33/2010. In the contest of F.A. No.32/2010 the Insurance Company even did not challenge the claim of owner, on shifting of liability on

interest to establish at least that there exists a condition excluding liability on account of the interest by the Insurance Company. It is in the

circumstance this Court finds, there is direct application of decisions (1997) 8 SCC 1 as well as (2006) 5 SCC 192 to the case of the owner and

interest burden involving accident involved clearly shifts to the Insurance Company.

11. This Court accordingly allowing the Appeal No.32/2010 interferes in the part of judgment directing owner to deposit the interest liability and setting

aside the same directs, the Interest liability U/provisions of Section 4(A)(3)(a) shifts to the Insurance Company involved. This Court makes it clear

that since the compensation amount is already in deposit for filing of F.A.O No.32/2010 in 2010 interest liability @12% shall be covering the period

from entitlement till deposit of compensation is made before the Commissioner. For the suffering of the claimant in not getting interest liability @ 12%

per annum after the date of judgment till deposit he will also be entitled to at least interest @ 6% looking to the suffering of the claimant in non-receipt

of interest U/s.4(A)(3)(a) of the Act, 1923, for the period from deposit of compensation by Insurance till date of payment at least within six weeks

from the date of this judgment.

12. Both the Appeals succeed, but however, to the extent indicated hereinabove. No order as to costs.

13. The parties may utilise the soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the

manner prescribed, vide Court's Notification No.4587 dated 25.3.2020.