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**(2001) 03 RAJ CK 0101**

**In the Rajasthan High Court**

**Case No :** Civil Special Appeal No"s. 4, 9 and 10 of 1992 and 25 of 1993

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Vilas Devi and Others

RESPONDENT

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**Date of Decision :** 07-03-2001

**Acts Referred:**

Employees Compensation Act, 1923 — Section 3, 4A  
Motor Vehicles Act, 1988 — Section 147, 95

**Citation :** (2001) ACJ 950 : (2001) 2 RLW 1224 : (2001) 2 WLC 335 : (2001) 2 WLN 286

**Hon'ble Judges :** AR. Lakshmanan, C.J;Rajesh Balia, J

**Bench :** Division Bench

**Advocate :** D.R. Lunkar, Sanjeev Johari and Rameshwar Chouhan, for the Appellant; A.K. Rajvanshi, for the Respondent

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## **Judgement**

Rajesh Balia, J.—Since these four special appeals raise common questions and, therefore, they were heard together and are being disposed of by a common judgment.

2. The main contention raised in these special appeals is that where on account of a motor accident an employee of the owner of vehicle dies while on duty in the course of his employment, whether the insurance company is liable to indemnify the insured in respect of claims arising out of such accident under Workmen's Compensation Act (for short "the Act") even in respect of liability to pay interest and penalty on account of delayed payment of compensation under the provisions of the Act.

3. The case of the insurance companies is that liability of the insurance companies in respect of claims arising under the provisions of the Act is only confined to the principal sum of compensation and they are not liable to indemnify the insured in respect of liability to pay the interest or penalty which arise because of the fault of the insured in not paying compensation in accordance with the law within the time provided in the statute, and not as a

result of accident.

4. The case of the claimants as well as the insured, the owner of the vehicle involved in accident, on the other hand is that the insurance companies are liable to indemnify the insured in respect of liability to pay interest or penalty also. According to the claimants in whose favour compensation including principal sum and interest or penalty has been awarded, can directly execute that award against the insurance company because the liability of insurance company is co-extensive with the insured and its liability is joint and several with the insured. Reliance was placed on a decision of this court in *United India Insurance Co. Ltd. Vs. Roop Kanwar and Others*, in which the insurance company has agreed to cover all the liabilities incurred by the insured under the Compensation Act and which case has not been overruled but only distinguished in the case of *Ved Prakash Garg Vs. Premi Devi and others*,

5. Here it would be appropriate to state the brief facts leading to these special appeals in short.

Facts of Appeal No. 4 of 1992:

6. The brief facts of this case are that on 16.11.1987, Kamlesh Kumar was working as driver with one Vipin Doshi on his rig No. MBM 3153 on the Bedaliya well in village Dhanla. The said rig machine was being operated by Kamlesh Kumar and four-five other persons. At that point of time, the drilling machine stopped and so, Kamlesh Kumar went towards the well to see what had happened. However, he fell in the well and died. The dependants of Kamlesh Kumar filed the claim petition before the Workmen's Compensation Commissioner, Pali. The claim petition was opposed by the owner of the rig machine, viz., Vipin Doshi as well as by the Oriental Insurance Co. Ltd. The learned Workmen's Compensation Commissioner, by his award dated 26.11.1990 awarded a sum of Rs. 86,112 as compensation to the claimants. He also imposed a penalty of Rs. 30,000 and awarded interest amounting to Rs. 41,334 at the rate of 12 per cent per annum. Against that award, the insurance company has filed S.B. Civil Misc. Appeal No. 38 of 1991, which came to be allowed in part by the learned single Judge of this court vide its judgment dated 2.12.1992. The award granting compensation amounting to Rs. 86,112 and imposing the penalty amounting to Rs. 30,000 has been maintained but, however, the claimants were made entitled for the interest at the rate of 6 per cent per annum for the period from 16.11.1986 to 16.11.1990, which came to Rs. 20,667. Hence this appeal by the insurance company.

Facts of Appeal No. 9 of 1992:

7. This appeal arises out of an accident which took place on 30.5.1985 at about 4.15 p.m. with vehicle No. RRG 3891, on which deceased Uma Shanker, son of the claimants Madan Gopal, son of Baluram and Panadevi, wife of Madan Gopal was employed as a conductor. The said vehicle was owned by Anandilal, son of Madan Gopal. In the said accident, Uma Shanker died. The parents of deceased

Uma Shanker claiming themselves to be the only dependants of deceased Uma Shanker filed a claim petition under the provisions of the Act before the Workmen's Compensation Commissioner, Bikaner alleging that the said vehicle was insured with the appellant National Insurance Co. Ltd. After trial, the learned Workmen's Compensation Commissioner, Bikaner vide his order dated 5.10.1989 held Anandilal, the owner of the vehicle liable for payment of compensation to the tune of Rs. 67,200 to the claimants. However, the learned Workmen's Compensation Commissioner did not allow any interest or penalty on the above principal amount of compensation.

8. Being dissatisfied with the order dated 5.10.89 passed by the learned Workmen's Compensation Commissioner, the claimants preferred S.B. Civil Misc. Appeal No. 10 of 1990 before this court. That appeal came to be allowed by the learned single Judge of this court vide judgment dated 11.10.1991, along with Appeal Nos. 300 of 1989 and 105 of 1991. The learned single Judge held that the claimants are entitled for simple interest at the rate of 6 per cent per annum on the amount of compensation due together with a further sum of 50 per cent of the amount due, as penalty from the employer and the insurance company jointly and severally as the liability of the employer in the present case is the legal liability and, therefore, the insurance company is liable to indemnify the liability of the employer.

Facts of Appeal No. 10 of 1992:

9. The brief facts of this case are: that on 20.11.1988 while deceased Babulal was working on the post of cleaner with Municipal Council, Udaipur, he met with an accident during the course of his employment on account of overturning of the tractor on which he was working as cleaner, which resulted into his death. His wife, two sons and mother, who are alleged to be his dependants filed a claim petition under the provisions of the Workmen's Compensation Act alleging therein that the vehicle was insured with New India Assurance Co. Ltd. The learned Workmen's Compensation Commissioner vide his order dated 2.6.1990 held Municipal Council, Udaipur liable for payment of compensation and penalty to the claimants under the provisions of the Workmen's Compensation Act to the tune of Rs. 81,112.20 and Rs. 24,333.60 respectively. The claimants were also held entitled to receive interest on the aforesaid sums of Rs. 81,112.20 and Rs. 24,333.60 at the rate of 12 per cent per annum from the New India Assurance Co. Ltd.

10. Being dissatisfied with the above order dated 2.6.1990 passed by the learned Workmen's Compensation Commissioner, Udaipur, the New India Assurance Co. Ltd. preferred S.B. Civil Misc. Appeal No. 105 of 1991, which came to be dismissed by the learned single Judge vide his judgment dated 11.10.1991. Hence this special appeal by New India Assurance Co. Ltd.

Facts of Appeal No. 25 of 1993:

11. The brief facts leading to this appeal are: that on 9.9.88, Banshilal was

working as helper on tanker No. RSJ 8788 belonging to one Laxmansingh, son of Bhanwarlal Karnawat, which was insured with the Oriental Insurance Co. Ltd., Udaipur. On that day, the tanker was being driven by one Keshuram. With a view to provide water to the engine of the said tanker, the driver of the tanker asked helper Banshilal to fetch water from hand pump. After fetching water from hand pump, as soon as Banshilal climbed over the tanker, truck No. DIG 1564 collided with it, as a result of which, tanker overturned and Banshilal fell down on the earth and received serious injuries on his head and died on the spot. The claimants are mother, sister and brother of the deceased Banshilal. They filed a claim petition before the Workmen's Compensation Commissioner, who allowed the claim petition and awarded a sum of Rs. 80,640 as compensation to the claimants. He also imposed a penalty of 20 per cent and awarded interest at the rate of 12 per cent per annum and directed the insurance company and the owner of the vehicle to deposit the amount within a period of thirty days. Against the impugned award passed by the learned Workmen's Compensation Commissioner, the insurance company filed S.B. Civil Misc. Appeal No. 363 of 1992, which came to be dismissed by this court vide its order dated 19.10.1993. Hence this special appeal by the insurance company.

12. We have heard Mr. D.R. Lunkar for Oriental Insurance Co. Ltd.; Mr. Sanjeev Johari for National Insurance Co. Ltd.; Mr. Rameshwar Chouhan for New India Assurance Co. Ltd. and Mr. A.K. Rajvanshi for the claimants and have also carefully gone through the record of the case.

13. Having heard the learned counsel appearing for the parties, we are of the opinion that the matter stands concluded by a decision of the Supreme Court in Ved Prakash Garg Vs. Premi Devi and others, In that case, the court was considering the following question:

Where an employee receives a personal injury in a motor accident arising out of and in the course of his employment while working on the motor vehicle of the employer, whether the insurance company, which insured the employer-owner of the vehicle against third party accident claims under Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act") and against claims for compensation arising out of proceedings under the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Compensation Act") in connection with such motor accidents, is liable to meet the awards of Workmen's Commissioner imposing penalty and interest against the insured u/s 4-A(3) of the Compensation Act.

14. From the aforesaid, it is apparent that the court was considering the question where the employee received personal injury in a motor accident arising out of and in the course of his employment while working on the motor vehicle of the employer, whether the insurance company, which has insured the employer-owner of the vehicle against the third party accident claims under Motor Vehicles Act, 1988 and against claims for compensation arising out of proceedings under the Workmen's Compensation Act, 1923 in connection with such motor

accidents, is liable to meet the awards of Workmen's Commissioner imposing penalty and interest against the insured employer u/s 4-A(3) of the Compensation Act. The court was of the view that the insurance company is liable to pay compensation as well as the interest but no penalty is payable by the insurance company as such a liability is not covered by the liability undertaken by the insurance company to indemnify the employer.

15. The learned counsel appearing for the claimants drew our attention to policy for the purpose of showing that in each of the above cases insured has paid additional premium to cover the liability under the Compensation Act; and submitted that liability of insurance company is not limited to statutory liability u/s 95 of the Motor Vehicles Act, but the insurer has undertaken additional liability under contract. Hence the insurer must be held liable to pay compensation and interest as well as penalty as per existing contract. We notice clause IMT-18 covering legal liability to pay driver and/or conductor employed in connection with the operation of motor vehicle, which reads as under:

In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the company shall indemnify the insured against his legal liability as under:

The Workmen's Compensation Act, 1923 and subsequent amendments 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 and/or conductor 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.

The premium having been calculated and paid while taking insurance of the vehicle concerned at the rate of Rs. 15 per driver and/or conductor.

Provided always that:

(i) This endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurance company or group of underwriters a policy of insurance in respect of liability as herein defined for his general employees.

(ii) The insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(iii) The insured shall keep a record of the name of each driver, cleaner, conductor or person employed in loading and/or unloading and the amount of wages, salary and other earnings paid to such employees and shall at all times allow the company to inspect such record.

(iv) In the event of the policy being cancelled at request of the insured no refund of the premium paid in respect of this endorsement will be allowed.

16. From the perusal of IMT-18 covering contractual liability under Compensation

Act to paid driver and/or conductor employed in connection with the operation of motor vehicle, it is clear that only legal liability arising out of Workmen's Compensation Act, 1923 has been undertaken by the insurance company to indemnify the insured against the claims arising under the said Act and no more. In addition it may be noticed that only additional liability undertaken under the policy is in respect of cost or expenses incurred by the insured with the written consent of the insurer. It is not the case of claimants or the employer that delay in withholding the payment of compensation was in consultation with and with written consent of insurer. Moreover proviso (ii) of IMT-18 makes it clear that complying with all statutory obligations was the duty of the employer. Not to delay the payment of compensation beyond the period envisaged, without justifiable cause is a statutory obligation of the insured. Once the insured fails to pay the compensation without reasonable cause within the time prescribed, the liability which is incurred for that reason is thus excluded out of contractual liability also. It may be noticed that difference between liability to pay interest and penalty is that while liability to pay interest is not subject to condition of absence of reasonable cause but is unconditional and automatic which makes it a part of compensation akin to a dependant having plaintiff's money and who keep it for his own use. But liability to penalty for delay in payment of compensation is founded on absence of reasonable cause to fall in the category of liability arising out of failure to discharge statutory obligation by the insured.

17. Learned counsel for the respondents have placed reliance on United India Insurance Co. Ltd. Vs. Roop Kanwar and Others, and laid emphasis on the distinction made by Supreme Court in Ved Prakash Garg Vs. Premi Devi and others,

18. We are not impressed with this submission. As noticed above, the insurance company has not contracted to indemnify the insured in respect of all liabilities, legal as well as penal arising under the Compensation Act irrespective of its nexus with the default of insured in acting contrary to the statutory obligations in making timely payment without reasonable cause. It may be pertinent to notice the observation of the Supreme Court in Ved Prakash Garg Vs. Premi Devi and others,

In the case of United India Insurance Co. Ltd. Vs. Roop Kanwar and Others, a learned single Judge of the Rajasthan High Court had to consider a situation where on payment of additional premium the insurance company had agreed in the light of endorsement No. 16 of the policy to cover all liabilities incurred by the insured under Compensation Act. In view of this contractual coverage of liability the insurance company in that case was held liable to meet the claim for penalty and interest as imposed upon the insured u/s 4-A(3) of the Compensation Act. This judgment proceeded on its own facts and was concerned with a situation converse to the one as was examined by the Karnataka High Court in Oriental Insurance Co. Ltd. Vs. Raju and Others, In the case decided by Karnataka High Court, as seen earlier, there was an express exclusion of such

liability of the insurance company. In the aforesaid case decided by the Rajasthan High Court there was an express inclusion of such liability for the insurance company which had taken additional premium. This judgment also, therefore, is of no assistance to either side.

19. The above passage is clear in its indication that case was distinguished on assumption that "there was express inclusion of such liability for the insurance company which had taken additional premium".

20. From clause IMT-18 it is apparent that the insurer has undertaken on payment of additional premium only "legal liability" arising under the Compensation Act and no more.

21. What is meant by "legal liability" under the Compensation Act, stand now concluded by the decision of Supreme Court in Ved Prakash Garg Vs. Premi Devi and others, and all cases of different High Courts taking a view contrary to that must be deemed to have been impliedly overruled.

22. The Apex Court in the case of Ved Prakash Garg 1998 ACJ 1 (SC), has made out a distinction between the liability that can be considered to be legal liability arising under the Workmen's Compensation Act, 1923 and the liability which cannot be so considered as legal liability arising out of accident in the course of employment, but referable to default of employer. The court observed as under:

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 the insured employers but also interest thereon, if ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious...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 the 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 de hors 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.... The court distinguished the nature of penalty levied u/s 4-A(3)(b) as under:

But similar 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 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.... 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 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 by the terms of the insurance policy found in provisos (b) and (c) to Sub-section (1) of Section II thereof.

Thus, making distinction between the two liabilities incurred by the employer under the Act, the court summed up the effect on insurer's liability to indemnify the insured as under:

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 Compensation Act along with 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.

23. The aforesaid pronouncement of the Supreme Court in Ved Prakash Garg Vs. Premi Devi and others, leaves no doubt in our mind that the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability arising under the Workmen's Compensation Act, 1923, 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 as that is not a legal liability of compensation which automatically arises out of injury caused to the employee during the course of employment but is a result of default committed by the employer in not paying the compensation without reasonable cause. While the liability to pay interest is almost automatic and becomes part of legal liability, penalty does not.

24. A learned single Judge of this court in *United India Insurance Co. Vs. Shahjad Khan and Others*, has also taken the same view following the decision in *Ved Prakash Garg Vs. Premi Devi and others*, Similar view has also been expressed by another learned single Judge of this court in *National Insurance Co. Ltd. Vs. Magna Ram and Another*, that the insurance company is not liable to indemnify the insured for payment of penalty to the employer-owner of the vehicle but is confined only to the extent of compensation proper and interest for the delayed payment.

25. In view of the aforesaid, we hold that the insurance company is liable to make payment of compensation as well as interest payable thereon for the delayed payment as part of legal liability arising out of the accident for which the insurer is liable to indemnify the insured employer under the insurance policy statutorily as well as contractually but he is not liable to indemnify the employer in respect of penalty imposed on him by the Workmen's Compensation Commissioner u/s 4-A(3)(b) which is in the nature of personal liability and not a part of compensation payable for the reason of injury suffered by the employee in the course of his employment but because of unjustified default on the part of the employer to pay compensation, within time allowed.

26. Lastly, it was contended by learned counsel for the appellant in connection with D.B. Spl. Appeal No. 10 of 1992 and D.B. Spl. Appeal No. 25 of 1993 that rate of interest awarded by the Compensation Commissioner and/or learned single Judge in the two cases is in excess of maximum that was permissible under the Compensation Act at the time the accident took place or the award of interest was made. It could not have exceeded 6 per cent per annum. This contention appears to be justified. Until amendment in Section 4-A(3)(a) w.e.f. 15.9.1995 vide Act No. 30 of 1995, the relevant provision was as under:

(3)(a) 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 at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty.

27. The expression "simple interest at the rate of 6 per cent" leaves no room of

doubt that maximum rate of interest that could be awarded for delayed payment of compensation is 6 per cent with effect from the expiry of one month from the date it became due. The amendment made in 1995 is not retrospective in its operation. At best it can yield to enhancement of the rate of interest from 6 per cent to 12 per cent w.e.f. 1.5.1995 if the amount of compensation is outstanding on 1.5.95 and thereafter. Accordingly, the award of interest in Appeal Nos. 10 of 1992 and 25 of 1993 needs to be modified by reducing the rate of interest awarded from 12 per cent per annum to 6 per cent per annum.

28. Accordingly, these appeals are allowed in part as under:

(i) In D.B. Special Appeal No. 9 of 1992 the order dated 11.10.1991 passed by the learned single Judge in S.B. Civil Misc. Appeal No. 10 of 1990 to the extent it holds the insurance company liable for payment of penalty in addition to the compensation and interest is concerned, is set aside.

(ii) In D.B. Special Appeal No. 10 of 1992 the order dated 2.6.1990 passed by the learned Workmen's Compensation Commissioner as also the judgment dated 11.10.1991 passed by the learned single Judge in S.B. Civil Misc. Appeal No. 105 of 1991 to the extent they hold the insurance company liable for payment of penalty in addition to compensation as well as interest is concerned, are set aside and rate of interest awarded on delayed payment is reduced from 12 per cent to 6 per cent per annum.

(iii) In D.B. Special Appeal No. 4 of 1992 the order dated 26.11.1990 passed by the learned Workmen's Compensation Commissioner as also the judgment dated 2.12.1992 passed by the learned single Judge in S.B. Civil Misc. Appeal No. 38 of 1991 are also set aside to the extent it holds insurance company liable for penalty u/s 4-A(3)(b).

(iv) In D.B. Special Appeal No. 25 of 1993 the order dated 30.6.1992 passed by the Workmen's Compensation Commissioner as well as the judgment dated 19.10.1993 passed by the learned single Judge in S.B. Civil Misc. Appeal No. 363 of 1992 making insurance company liable for penalty u/s 4-A(3)(b) is set aside so also rate of interest awarded u/s 4-A(3)(a) is reduced to 6 per cent per annum from 12 per cent per annum.

(v) However, the liability of the insurance company jointly and severally along with the employer-owner of the vehicle to the extent it relates to compensation under the Compensation Act and interest thereon up to simple interest at the rate of 6 per cent per annum on the amount of compensation is upheld in all cases.

29. There shall be no order as to costs in each case.

A.R. Lakshmanan, C.J.

I agree.