

(2016) 09 SHI CK 0083
In the High Court Of Himachal Pradesh
Case No : FAO No. 451 of 2009.

**Oriental Insurance Company Limited - Appellant @HASH Gopal Chand
and another**

Date of Decision : 30-09-2016

Acts Referred:

Citation : (2016) AAC 2456 : (2017) 152 FLR 53 : (2016) 4 LLJ 397

Hon'ble Judges : Sureshwar Thakur, J.

Bench : Single Bench

Advocate : Mr. G.D. Sharma, Advocate, for the Appellant; Mr. Malay Kaushal vice Mr. Anand Sharma, Advocates, for the Respondent No. 1; Mr. S.D. Vasudeva, Advocate, for the Respondent No. 2

Final Decision : Partly Allowed

Judgement

Mr. Sureshwar Thakur, J.(Oral) - The instant appeal arises from the impugned order of the learned Commissioner, rendered under the Workmen's

Compensation Act, 1923 Palampur, District Kangra, H.P. (for short the "Commissioner"), whereby he allowed the application preferred thereat by the claimant/respondent No. 1 for grant of compensation under the Workmen's Compensation Act (for short the "Act"). The claimant/respondent No. 1 herein stood employed by respondent No. 2 herein on a monthly wage of Rs. 5000/- for performing drilling work in the construction of a road near Punt Road Thana Pangi District Chamba and during the course of his performing employment under his employer, a big stone rolled down from upper side of the hill and caused a serious injury to the claimant/respondent No. 1 herein. In sequel thereto, the petitioner/respondent No. 1 herein suffered 100% disability.

2. The learned Commissioner allowed the petition preferred thereat by the claimant/respondent No. 1 herein. The Insurance Company-appellant herein standing aggrieved by the rendition of the learned Commissioner hence concerts to assail it by preferring an appeal therefrom before this Court.

3. When the appeal came up for admission on 12.10.2009, this Court, admitted

the appeal instituted by the Insurance Company/appellant against the order of the learned Commissioner, on the hereinafter extracted substantial question of law :-

1. Whether the insured can be held liable to pay the award especially when there has been suppression/concealment of material facts and misrepresentation made in the proposal form which form the basis of the contract of insurance?
2. Whether the appellant can be held liable to pay the interest especially where there is specific endorsement in the contract of insurance Ex.R-5 that the policy shall not extend to indemnify the insured in respect of any interest or penalty which may be imposed upon them on account of failure to comply with the requirements laid under the Workmen Compensation Act, 1923, and subsequent amendments of the said Act?

Substantial Questions of law No. 1 and 2.

4. Uncontrovertedly, the workman as displayed by disability certificate comprised in Ex.PA suffered 100% disability, in sequel, to his uncontrovertedly sustaining injuries during the course of his performing employment under the relevant employer who stands impleaded as respondent No. 2. Respondent No. 2 holds a valid insurance cover from the insurer wherein the insurer is fastened with a liability to indemnify the insured for any liability determined under the Act vis-a-vis a workman employed by him. Ex. R-5 is the apposite insurance policy executed inter se the insurer and respondent No. 2 wherein the latter stood insured qua liability towards compensation assessed under the Act vis-a-vis a workman employed by him. Ex.R-5 is an unnamed policy for workers. Obviously with the name of the relevant workman not occurring therein, the insurer has espoused a contention of its hence holding leverage to exculpate its liability arising from its executing Ext.R-5 with respondent No. 2. However, the aforesaid contention loses its tenacity in the trite factum of the relevant insurance policy though not unraveling therein the name of the relevant workman yet it including there-within the liability of the insurer for indemnifying a claim adjudged qua two drillermen by the competent authority. Consequently, with the relevant workman standing employed by respondent No. 2 as a drillerman in the relevant work, factum whereof qua his standing engaged in the relevant work in the aforesaid capacity by respondent No. 2 has remained unimpeached wherefrom the ensuing sequel is of with evidently the relevant workman standing deployed as a drillerman in the relevant work, whereupon, hence despite his name not occurring in Ex.R-5 rather with Ex.R-5 insuring the aforesaid category of workmen deployed by respondent No. 2 gives leverage to the insured to claim indemnification from the insurer qua the compensation amount determined vis-a-vis him by the Commissioner, under the Act. Ex.R-5 is a contract of insurance, its terms and conditions enjoined meteing of deference by the insurer. Its perusal unveils of the insurer circumscribing the limit of insurance besides its therein fettering the limit qua the apposite indemnification by it vis-a-vis the relevant pronouncement by the competent authority qua the relevant workman, who

suffers evident disability, in sequel, to his sustaining injury during the course of his performing employment under his employer, to the extent of the relevant computation of the relevant compensation amount assessed qua the workman by the competent authority emanating on application by the authority concerned the relevant statutory parameters, parameters whereof stand derived by it, by its meteing reverence to the relevant condition in Ex.R-5 wherein the insurer in the bilateral contract of insurance executed by it with the insured, has limited the per mensem wages of the relevant workman upto Rs. 2700/- per month, also therefrom the relevant computations were enjoined to spur whereas the competent authority in digression therefrom taking Rs. 3900/- per month to be the figure whereto the relevant statutory principles for computation of compensation amount vis-a-vis the workman stands applied, has hence infringed an inherent condition in the contract of insurance whereupon this Court would hold jurisdiction to interfere with the award of the learned Commissioner. The aforesaid submission obviously holds weight prominently when the relevant contract of insurance holds clout on all fronts, also when any infraction of its terms and conditions would render the relevant computation made by the learned Commissioner to fall apart. In sequel, this Court metes deference to Ex. R-5 where within the insurer has qua the relevant workman pegged his salary/ wages at Rs. 2700/- per month whereto the relevant statutory principles are enjoined to be applied, for arriving at the compensation amount payable to him. Consequently, this Court construes Rs. 2700/- per mensem to be relevant insured wage/salary per mensem of the workman thereupon this Court on application of the relevant statutory parameters, assesses the compensation amount payable to him in the hereinafter manner:-

Average monthly wages Rs. 2700/-

Restricted to 60% Rs. 1620/-

Relevant factor applied Loss of earning capacity 100%

(a) Compensation = 1620×215.28 = Rs. 3,48,754 (rounded of)

(b) Interest @ 9% w.e.f. 17.3.2006 = Rs. 1,04,741/- to 16.7.2009:

Total of (a) & (b) = Rs. 3,48,754 + Rs. 1,04,741 /- = Rs. 4,53,495/-

Amount of compensation to be paid : Rs. 4,53,495.

5. Also the liability of the interest component qua the compensation amount determined by the Commissioner stood fastened upon the insurer. The fastening of liability qua interest calculated on the compensation amount determined by the Commissioner qua the workman, upon the insurer, is also in transgression of the mandate of the verdict of the Hon''ble Apex Court encapsulated in New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya and another, (2006) 5 SCC 192, relevant paragraph No. 24 whereof stands extracted hereinafter wherein a visible mandate stands enshrined of the authority assessing compensation amount qua a workman under the Act standing enjoined to

vindicate the contract of insurance executed inter se the insured and the insurer. Also a graphic mandate stands embodied therein of in the event of the insurance cover excluding the insurer to indemnify the insured qua the interest levied on the compensation amount assessed by the authority concerned vis-a-vis the workman, the relevant authority concerned while exercising jurisdiction under the Act not holding any jurisdiction, to fasten any liability qua the interest component of the compensation amount, upon the insurer. Relevant paragraph No. 24 of the judgment supra reads as under:-

"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 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 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."

...(pp 199-200)

Consequently, the fastening by the learned Commissioner upon the insurer of the liability of interest calculated by it upon the compensation amount assessed by it vis-a-vis the workman suffers from an inherent fallacy. In sequel, the award of the Commissioner to the extent of its fastening liability of interest calculated upon the compensation amount as determined by it upon the insurer, stands

quashed and set aside. Contrarily, the liability of interest on the compensation amount as stands determined by this Court vis-a-vis the workman is fastened upon the employer/respondent No. 2 herein. Substantial questions of law are answered accordingly.

For the reasons recorded herein above, the instant appeal is partly allowed and the order impugned before this Court is modified. The petitioner/respondent No. 1 is held entitled to a compensation of Rs. 3,48,754/- + interest Rs. 1,04,741/- (total Rs. 4,53,495). The appellant herein/insurance company is directed to indemnify respondent No. 2/employer qua the compensation amount as per the insurance policy. However, the liability qua the interest as calculated thereon quantified at Rs. 1,04,741/- is fastened upon the employer/respondent No. 2. The aforesaid amount(s) shall be respectively deposited before this Court by the insurance company and the employer/respondent No. 2 within two months from today, failing which it shall carry interest at the rate of 9% per annum from the date of order. All pending applications also stand disposed of. No order as to costs.