

(2016) 03 SHI CK 0062
In the High Court Of Himachal Pradesh
Case No : FAO (WCA) No. 185/2007

Oriental Insurance Company Limited	Vs	APPELLANT
Nirmla and Others		RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Citation : (2016) 3 ACC 671 : (2016) 3 HimLR 1309

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : G.C. Gupta, Senior Advocate and Meera Devi, Advocate, for the Appellant; R.S. Chandel, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Rajiv Sharma, J.—1. This appeal is directed against the order dated 9.4.2007 rendered by the learned Commissioner (SDM) in case No. 7/2005.

2. "Key facts" necessary for the adjudication of this appeal are that respondents-claimants No. 1 and 2, namely Nirmala and Master Shishu filed a claim petition against the appellant-Insurance Company and respondent No. 3, Dinesh Kumar. According to the claim petition, Sh. Girja Nand was employed as driver by respondent No. 3, Dinesh Kumar. He was 26 years of age. He was getting Rs. 5000/- per month as wages. The vehicle met with an accident near Kandaghat resulting in death of Sh. Girja Nand.

3. The petition was contested by the appellant as well as owner, Dinesh Kumar. The owner has admitted that the deceased was his driver. He was being paid Rs. 2500/- per month wages plus Rs. 50/- as daily expenses. The Mahindra Pick-up was also duly insured with the appellant-Insurance Company. The insurance was valid upto 25.4.2006.

4. Learned Commissioner framed the issues. He allowed the claim petition vide order dated 9.4.2007 and awarded compensation of Rs. 5,64,033/- in favour of the claimants. The appellant-insurance company through its Divisional Manager

was directed to deposit the compensation amount before the Court within 30 days from the date of passing of the order, failing which penalty, as prescribed under the provisions of Workmen's Compensation Act, was to be imposed. Hence, this petition.

5. This appeal was admitted on following substantial questions of law on 12.6.2007:--

"a) Whether the Commissioner below is right in holding wages of the deceased at Rs. 2500/- per month in the absence of any evidence to prove the same on the record and further whether the daily allowance allegedly being paid to the deceased forms part of the wages as per the provisions of the Workmen's Compensation Act?

b) Whether the Commissioner below is right in awarding interest on the amount of the compensation with effect from September 2, 2005 that is on the expiry of 30 days of the date of the accident in view of the fact that the amount of compensation will be paid to the claimant fell due on the date of adjudication of the same, that is, the date of the Award?

c) Whether the Commissioner below is right in imposing the penalty upon the appellant on his failure to deposit the amount of compensation as assessed within thirty days of the issue of the order?"

6. Mr. G.C. Gupta, Senior Advocate, on the basis of substantial questions of law framed, has vehemently argued that the income of the deceased has wrongly been assessed. He then contended that interest has wrongly been awarded from the date of the accident. He lastly contended that the conditional order of penalty could not be passed by the learned Commissioner.

7. Mr. R.S. Chandel, Advocate, has supported the impugned order dated 9.4.2007 passed by the learned Commissioner.

8. I have heard learned counsel for the parties and have gone through the records carefully.

9. Since all the substantial questions of law are interconnected and interlinked, the same are taken up together for determination to avoid repetition of discussion of evidence.

10. The accident has taken place on 2.8.2005. Sh. Girja Nand died in the accident on the spot. He was 26 years of age. He died during the course of employment with respondent No. 3.

11. Nirmala Devi appeared as PW1. She tendered documents, Ext. P-1 copy of Pariwar Register, P-2 Legal heir certificate and also original certificate of middle standard examination.

12. PW2, H.C. Daya Ram, proved copy of FIR, Ext. PW2/A.

13. DW1 Dinesh Kumar, testified that Girja Nand was his driver and he was

having valid driving licence. He was being paid Rs. 2500/- per month plus Rs. 50/- as daily expenses.

14. The relationship of employer and employee stands proved on the basis of statements of PW1 and DW1. The vehicle in question was insured with the appellant-Insurance Company. The insurance was valid upto 25.4.2006. The learned Commissioner has rightly awarded compensation to the tune of Rs. 5,64,033/- along with interest @ 12% per annum. However, the learned Commissioner could not order the payment of penalty in case the amount was not deposited before the Court within 30 days from the date of passing of the order. It is settled law that interest component has to be paid by the Insurance Company but the penalty has to be paid by the owner as per the Act.

15. Their Lordships of Hon"ble Supreme Court in L.R. Ferro Alloys Ltd. v. Mahavir Mahto and another, , (2002) 9 Supreme Court Cases 450 have held that payment of interest and penalty are two distinct liabilities. Their Lordships have further held that the Insurance Company is liable to reimburse only the compensation with interest thereon, if any, and not the penalty imposed on insured employer for default of payment of amount within one month. Their Lordships have held as under:--

"5. The only contention put-forth before us is that the entire liability including penalty and interest will have to be reimbursed by the Insurance Company and this aspect has not been examined by the learned single Judge in the High Court and needs examination at our hands. In Ved Prakash Garg v. Premi Devi and Ors., this Court after examining the entire scheme of the Act held that payment of interest and penalty are two distinct liabilities arising under the Act, while liability to pay interest is part and parcel of legal liability to pay compensation upon default of payment of that amount within one month. Therefore, claim for compensation along with interest will have to be made good jointly by the Insurance Company with the insured employer. But, so far as the penalty imposed on the insured employer is on account of his personal fault Insurance Company cannot be made liable to (reimburse penalty imposed on the employer. Hence the compensation with interest is payable by the Insurance Company but not penalty. Following the said decision and for the reasons stated therein we modify the order made by the High Court to that extent. The appeal is allowed in part accordingly."

16. Their Lordships of Hon"ble Supreme Court in Saberabibi Yakubhai Shaikh and others v. National Insurance Company Limited and others, , (2014) 2 Supreme Court Cases 298 have held that the payment of interest is to be awarded from the date of accident. Their Lordships have held as under:--

"8. We have perused the aforesaid judgment. We are of the considered opinion that the aforesaid judgment relied upon by the learned counsel for the appellants is fully applicable to the facts and circumstances of this case. This Court considered the earlier judgment relied upon by the High Court and observed that

the judgments in the case of National Insurance Co. Ltd. v. Mubasir Ahmed [, (2007) 2 SCC 349] and Oriental Insurance Co. Ltd. v. Mohd. Nasir [, (2009) 6 SCC 280] were per incuriam having been rendered without considering the earlier decision in Pratap Narain Singh Deo v. Srinivas Sabata [, (1976) 1 SCC 289]. In the aforesaid judgment, upon consideration of the entire matter, a four-judge Bench of this Court had held that the compensation has to be paid from the date of the accident.

9. Following the aforesaid judgments, this Court in Oriental Insurance Company Limited versus Siby George and others (supra) reiterated the legal position and held as follows:

"11. The Court then referred to a Full Bench decision of the Kerala High Court in United India Insurance Co. Ltd. v. Alavi and approved it insofar as it followed the decision in Pratap Narain Singh Deo.

12. The decision in Pratap Narain Singh Deo was by a four-judge Bench and in Valsala K. by a three-judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in Mubasir Ahmed and Mohd. Nasir, each of which was heard by two Judges. But the earlier decisions in Pratap Narain Singh Deo and Valsala K. were not brought to the notice of the Court in the two later decisions in Mubasir Ahmed and Mohd. Nasir.

13. In the light of the decisions in Pratap Narain Singh Deo and Valsala K., it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in Mubasir Ahmed and Mohd. Nasir insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala K. do not express the correct view and do not make binding precedents."

10. In view of the aforesaid settled proposition of law, the appeal is allowed and the judgment and order of the High Court is set aside. The appellants shall be entitled to interest at the rate of 12% from the date of the accident. No cost."

17. The income of the deceased has rightly been assessed at Rs. 2500/- per month on the basis of statements of PW1 Nirmala Devi and DW1 Dinesh Kumar. The learned Commissioner could not pass the conditional order. The claimants were entitled to interest from the date of accident. All the substantial questions of law are answered accordingly.

18. Accordingly, in view of the discussions and analysis made hereinabove, the present appeal is partly allowed and the impugned order dated 9.4.2007 is modified to the extent that conditional order of payment of penalty by the insurance company is set aside. The claimants are held entitled to compensation of Rs. 5,64,033/- along with interest @ 12% per annum from the date of accident. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.