

(2009) 09 RAJ CK 0060
In the Rajasthan High Court

Patidar, Contractor and Another

APPELLANT

Vs

Rama and Another

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 148

Workmens Compensation Act, 1923 — Section 30

Citation : (2010) 2 WLN 88

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.

1. In this miscellaneous appeal filed u/s 30 of the Workmen Compensation Act, 1923, employer appellants are challenging award dated 03.07.1997 passed by the Commissioner, Workmen Compensation, Bnaswara in claim Case No. 8/96, whereby, the learned Commissioner allowed compensation of Rs. 1,02,475/- along with penalty of Rs. 51,238/- and interest at the rate of 12% from the date of accident which is 16.05.1996.

2. During the course of arguments, which disputing adjudication made by the learned Commissioner, learned Counsel for the appellants submits that the learned Commissioner has committed an error while imposing the interest liability only against the appellants and not against the insurance company. Further, it is submitted that the insurance company has been liable to pay compensation of Rs. 1,02,475/- has not challenged the order impugned also; but appellants are challenging the liability of interest imposed upon the appellants. So also, finding on issue No. 4 with regard to releasing the insurance company from the liability of interest upon the award on the ground that according to provisions of the Act the employer is under obligation to pay compensation within one month failing which there is provision for payment of interest.

3. Learned Counsel for the appellant submits that without any cogent reasons the learned Commissioner has imposed the liability of interest upon the appellant-

employers whereas award has been passed against the New India Insurance Company; meaning thereby, till adjudication, the Insurance Company has failed to pay the compensation knowing well that workman was insured with them through the employer. Learned Counsel for the appellants invited my attention towards recent judgment of the Hon'ble Supreme Court, reported in MACD 2009 S.C. 4, in which, while considering the earlier judgment in New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya, MACD 2006 (2) (SC) 673 , so also, judgment in the case of Ved Prakash Garg Vs. Premi Devi and others, it has been held that upon the facts if it appears that insurance company or employer has failed to pay compensation, then, they are liable to pay interest.

4. Here, in the present case, except assertion in the reply before the Court by the insurance company, no documentary evidence is produced by the insurance company with regard to non-payment of interest. Moreover, the insurance company has accepted that employee was insured with the insurance company through his employer and, for the same, policy was issued. Therefore, in view of the judgment of the Hon'ble apex Court, as per facts of this case, insurance company is liable to pay interest because workman was insured with the insurance company through the employer and employer was regularly paying the premium.

5. Per contra, learned Counsel for the insurance company vehemently argued that there was no direct relation of the insurance company with the workman. He was insured through his employer and if the employer has failed to pay compensation within stipulated time as per provisions of the Act of 1923, then, insurance company cannot be held responsible for interest upon the compensation. In this case, compensation has been paid as ordered by the Commissioner, Workmen Compensation by the insurance company and learned Commissioner has rightly given its finding in the impugned judgment that insurance company is not liable to pay interest. The interest is to be paid by the employer.

6. I have considered the rival submissions made before me, so also, perused the recent judgments of the apex Court cited by learned Counsel for the appellants.]

7. In the case of New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya (Supra) Hon'ble Supreme Court held that directions for payment of interest by the insurance company was not sustainable and it was held that insurance company was not liable to pay any interest; and if so advised, the amount of interest could be recovered by the claimants from the employer. In the case of Ved Prakash Garg v. Premi Devi and Ors. (Supra), Hon'ble apex Court observed that the insurance company is liable to pay not only the principal amount of compensation payable by the insured employer but also interest thereon if ordered by the Commissioner to be paid by the insured employer. The insurance company is liable to meet claim for compensation along with interest as imposed on insurer employer by the Act.

8. Hon"ble Supreme Court, in the case of Kamla Chaturvedi v. National Insurance Co. and Ors. MACD 2009 (SC) 4, has held that at the time of deciding question of interest the evidence on record is required to be seen. Therefore, while distinguishing the above two judgments, it is held by the Hon"ble aped Court that a contract of insurance, unlike Section 148 of the Motor Vehicles Act, is governed by the provisions of the Insurance Act, 1938 and parties are free to act at their own volition. Here, in the present case, I have perused the entire record of the case, so also, evidence adduced by the insurance company.

9. The insurance company is accepting that the workman was insured with the insurance company though his employer but with regard to nonpayment of interest nothing has been said as to how the insurance company is not liable to pay interest. Further, no evidence with regard to escaping from their liability to pay interest is produced on record. So also, it is observed by the learned trial Court that insurance company, except filing reply, did not adduce any evidence to support their contention. In this view of the matter, when no evidence is produced in support of their written-statement before the Commissioner, then, obviously it is required to be presumed that in absence of any evidence the legal heirs of the workman were entitled for compensation as well as interest and penalty. In my opinion, when no evidence was produced by the employer as well as insurance company for non-payment of compensation within stipulated time, then, obviously the employer as well as insurance company both are liable to pay interest jointly.

10. Therefore, to the extent of order for payment of interest, the judgment rendered by the Commissioner, Workmen Compensation, Banswara is hereby modified and it is held that in the absence of any evidence in support of the written-statement filed by employer as well as insurance company, the liability to pay interest is to be borne by both the employer and insurance company jointly.

11. In this view of the matter, order of compensation is modified to the extent it relates to the liability to pay interest imposed upon the appellants only; and, it is ordered that both appellants and insurance company are jointly liable for payment of interest in equal share because, admittedly, the compensation was not paid within the time provided in the Act of 1923.

12. It is made clear that in view of the above modification and the fact that interest as ordered by the Commissioner has already been paid to the claimant, the appellants will be entitled to recover the share of the amount of interest imposed against the insurance company.

13. With aforesaid modification, this appeal is partly allowed.