

(2017) 03 GAU CK 0046
In the Gauhati High Court
Case No : 19 of 2007

Sri Binod Kr. Sobhasaria

APPELLANT

Vs

The Branch Manager, New India Assurance Co.Ltd. & ors.

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

[Workmens Compensation Act, 1923](#), [Section 4A\(1\)](#), [Section 30\(1\)\(a\)](#) - Compensation to be paid when due and penalty for default - Appeals

Citation : (2017) 03 GAU CK 0046

Hon'ble Judges : Kalyan Rai Surana

Bench : SINGLE BENCH

Advocate : RK Agarwal, AR Agarwal, M. Talukdar

Judgement

1. Heard Mr. AR Agarwal, learned counsel for the appellant. None appears for the respondents although notice has been duly served.

2. This appeal under Section 30(1)(a) of the Workmen's Compensation Act, 1923 now Employees' Compensation Act, 1923 (hereinafter referred to as 'said Act') is against the judgment and order dated 27.6.06 passed by the learned Commissioner, Employees' Compensation, Dhubri in W.C. Case No. 37/04 was admitted by the order dated 16.5.07 on the following substantial question of law: "Whether the learned Court below erred in directing the appellant to pay interest on the awarded amount under Section 4A(3) of the Workmen's Compensation Act, 1923, in the face of the decision of the Apex Court in Ved Prakash Garg versus Prema Devi as reported in AIR 1997 SC 3854?"

3. In the present case in hand, the respondent No.1 herein i.e. the New India Assurance Company Limited was directed to pay compensation of Rs.4,15,960/- on account of death of the husband of respondent No.2, who was also the son of respondent No.3. However, by the said order the appellant herein was directed to deposit a sum of Rs.76,640/- as 9% interest per annum from the date of the award.

4. The appellant is aggrieved by the savourable policy of the award by which the liability to pay interest was burdened on the appellant. The substantial question as framed by this Court while admitting the appeal is no longer resintegra. The said issue has already been answered by Hon''ble the Supreme Court in the case of Ved Prakash Garg vs. Premi Devi and others reported in (1997) 8 SCC 1.

5. The relevant part of the said judgment is extracted as below: "....19. 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.

20. In view of the aforesaid conclusion of ours the present appeals will have to be partly allowed. The impugned judgments of the High Court will stand confirmed to the extent they exonerate the respondent-insurance companies of the liability to pay the penalty imposed on the insured employers by the Workmen's Commissioner under Section 4-A(3) of the Compensation Act. But the impugned judgments will be set aside to the extent to which they seek to exonerate insurance companies for meeting the claims of interest awarded on the principal compensation amounts by the Workmen's Commissioner on account of default of the insured in paying up the compensation amount within the period contemplated by Section 4-A(3) of the Compensation Act. Accordingly it must be held that the respondent-insurance company will be liable to meet the claim of the appellant-insured in Appeals Nos. 15698-15699 of 1996 to the extent of Rs 88,548 in Claim Case No. 2 of 1992 with interest thereon at the rate of 6% per annum from the date of accident till the date of payment. But the respondent-insurance company will not be liable to meet the claim of penalty of Rs 44,274 imposed on the appellant-insured along with the interest of 6% per annum on the said amount of Rs 44,274. To that extent the award of the Commissioner will stand modified. So far as the Claim Case No. 3 of 1992 is concerned the respondent-insurance company will be liable to reimburse the compensation amount of Rs 88,968 with interest at the rate of 6% p.a. thereon from the date of the accident till the date of payment. But it will stand exonerated of its liability of reimbursement so far as the penalty amount of Rs 41,984 and amount of interest at 6% p.a. thereon are concerned. To that extent the award of the Workmen's Commissioner in Claim Case No. 3 of 1992 will stand modified. Similarly in Civil Appeal No. 15700 of 1996 the impugned judgment of the High Court will stand partly set aside so far as the claim for interest as imposed on the appellant-insured is concerned and the award of the

Workmen's Commissioner insofar as his award of Rs 81,540 as compensation along with interest will stand confirmed. But the further part of the award to the extent it directs that in the event of failure to pay the said amount within one month a penalty of 30% p.a. shall be payable by the insurance company, will stand set aside. Consequently the respondent-insurance company in this case will be liable to pay Rs 81,540 by way of compensation with interest at 6% per annum thereon from the date of the accident till the date of payment to the claimants. The awards of the Commissioner will stand modified accordingly. They will obviously remain untouched so far as they are against the employers. It will be open to the claimants to enforce their claims of penalty amounts with proportionate interest thereon against the employers concerned."

6. In the case of Praveenbhai S. Khambhayata vs. United India Insurance Company Ltd. reported in (2015)11 SCC 417, the Insurance Company was directed to pay interest. The relevant paragraphs are extracted below: "...16. The appellant has deposited Rs 3,25,365 i.e. the principal amount with the Labour Court/Commissioner for Workmen's Compensation, Rajkot on 18-2-2014. The matter was listed before the Supreme Court Lok Adalat on 6-12-2014 wherein the appellant was directed to deposit the balance amount. The first respondent Insurance Company shall deposit the balance compensation being 15% penalty and the interest @ 12% after one month from the date when the compensation amount fell due and also 15% penalty with the Labour Court/Commissioner for the Workmen's Compensation within a period of six weeks from today. On such deposit, the same shall be disbursed to Respondents 2 to 4. The amount of Rs 3,25,365 already deposited by the appellant with the Commissioner for Workmen's Compensation shall also be disbursed to Respondents 2 to 4 if not already disbursed. After disbursing the amount to Respondents 2 to 4, the Commissioner for Workmen's Compensation, Rajkot shall submit a report to this Court regarding compliance at an early date preferably not exceeding four months from today. The first respondent Insurance Company shall pay the amount of Rs 3,25,365 to the appellant which it has already deposited towards compensation within a period of six weeks.

17. The impugned judgment of the High Court is set aside and the appeal is allowed in terms of the above directions. In the facts and circumstances of the case, we make no order as to costs."

7. The issue that the liability of the Insurer to pay interest having been answered, the substantial question of law is answered in affirmative by holding that the learned trial court erred in directing the appellant to pay interest under Section 4A(1) of the said Act and the substantial question of law is decided in favour of the appellant.

8. Accordingly, that part of the impugned judgment and order dated 27.6.06 passed by the learned Commissioner, Employees' Compensation, Dhubri in W.C. Case No. 37/04 insofar as it relates to direct the appellant herein to deposit Rs.76, 604/- as 9% interest, is hereby modified to the extent that the said

liability with interest will now become payable by the respondent No.1, namely, New India Assurance Company Limited. The same shall be deposited by the respondent No.1 before the learned Commissioner, Employees' Compensation, Dhubri within a period of 30(thirty) days from today failing which the learned Commissioner, Employees' Compensation, Dhubri shall take steps as per law for recovery of the same from the respondent No.1/company.

9. In the result, the appeal is allowed.

10. LCR be sent back forthwith.