(2011) 04 DEL CK 0243

In the Delhi High Court

Case No : FAO No. 232 of 2010

The New India Assurance Co. Ltd. APPELLANT

Vs

Satyawati and Others RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Employees Compensation Act, 1923 — Section 19, 3, 30, 4, 4A
Motor Vehicles Act, 1988 — Section 147, 147(1), 148, 149(1), 167

Citation : (2012) 1 AD 419 : (2011) 123 DRJ 612 : (2011) 4 ILR Delhi 53

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : D.D. Singh and Navdeep Singh, for the Appellant; Amit Kumar Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The issue in this First Appeal u/s 30 of the Workmen''s Compensation Act, 1923 (now called as Employee''s Compensation Act, 1923, hereinafter referred to as ''the Act'') is whether there is any liability for payment of interest upon an insurance company and which interest becomes payable by an employer on account of the failure of the employer to pay the compensation to the workman when it ''falls due''.

2. The facts of the case are that the deceased Sh. Shishupal was a workman employed by Sh. Sumer Singh. Sh. Shishupal used to work as a helper in the vehicle owned by Sh. Sumer Singh. An accident occurred on 20.11.2005 of the vehicle resulting in the death of the workman Sh. Shishupal. The dependants of Sh. Shishupal, therefore, filed a claim under the Workmen''s Compensation Act, 1923against the employer and the insurance company, and which claim has been allowed by the impugned judgment dated 8.4.2010.

3. It is contended by the learned Counsel for the Appellant that in terms of the provisions of Sections 3, 4 and 4-A of the Employee''s Compensation Act, 1923, the insurance company takes liability only with respect to the principal

compensation adjudicated and is not liable to pay interest on the compensation which is awarded by the Commissioner, Workmen''s Compensation.

4. The Supreme Court way back while deciding the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, had an occasion to consider the issue as to when can the compensation amount be said to have ''fallendue'' as per Section 4 of the Act. No doubt, the Supreme Court in the case of Pratap Narain (supra) was dealing with the issue of penalty, however, both penalty and interest are consequences of non-payment of the compensation on the date when the said compensation falls due. The Supreme Court, in this judgment of four Judges, in this regard, has observed as under:

6. It has next been argued that the Commissioner committed a serious error of law in imposing a penalty on the Appellant u/s 4A(3) of the Act as the compensation had not fallen due until it was ''settled'' by the Commissioner u/s 19 by his impugned order dated May 6, 1969. There is however no force in this argument.

7. Section 3 of the Act deals with the employer''s liability for compensation. Sub-section (1) of that section, provides that the employer shall be liable to pay compensation if "personal injury is caused to a workmen by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under Sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore become liable to pay the compensation as soon as the aforesaid personal injury was caused to the workmen by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the commissioner''s order dated May 6, 1968 u/s 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, he settled by the commissioner. There is therefore nothing to justify the argument that the employer''s liability to pay compensation Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The Appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the Appellant, and there is no justification for the argument to the contrary.

8. It was the duty of the Appellant, u/s 4A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the Respondent. He failed to do so. What is worse, he did not even make a provisional payment under Sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the Respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no need to the Respondent''s personal approach for obtaining the compensation. It will be

recalled that the Respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the Appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the Respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty.

(Emphasis added)

A reading of the aforesaid paragraphs clearly show that the Supreme Court has held that the compensation payable to a workman, in fact, falls due on the date of accident and therefore compensation becomes due after one month of the date of the accident. Therefore, when compensation is not paid after one month of the date of accident, then, the consequences of penalty and interest flow. I have already noted that this is a judgment of four Judges of the Supreme Court, and therefore, unless and until the ratio of this judgment is overruled by a Constitution Bench decision of the Supreme Court, the ratio of Pratap Narain will prevail and which ratio is that the amount falls due after one month of the accident/incident.

5. The next judgment in the chain of decisions is the judgment of Maghar Singh Vs. Jashwant Singh, a decision of a Division Bench of three Judges of the Supreme Court, and as per which, interest was granted from the date of the accident. Though, of course, there is no detailed discussion in this judgment as to when the amount falls due, however, interest has been awarded from the date of the accident.

6. The next important decision dealing with the aspect as to when the compensation falls due is the decision of the Division Bench of two Judges of the Supreme Court in the case of Ved Prakash Garg Vs. Premi Devi and others, This judgment in the case of Ved Prakash (supra) seemingly strikes a discordant note to the ratio in the case of Pratap Narain. However, a reading of this judgment shows that the earlier binding decision of the Supreme Court in the case of Pratap Narain was not referred to by the Court. Not only this, when we refer to para 14 of the judgment of Ved Prakash, the Supreme Court while holding that the amount falls due from adjudication, yet, holds that interest can be granted from the date of the accident. Para 14 of the said judgment reads asunder:

14. 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 insured employers but also interest thereon, if ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Workmen''s Compensation Act gets foisted on the employer provided it is shown

that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the identical provisions under the very contracts of insurance reflected by the Policy which would make the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer u/s 3 read with Section 4-A of the Compensation Act. All these provisions represent a well-knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier while discussing the scheme of Section 4-A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one month it is not paid by the employer then as per Section 4-A(3)(a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose bread-winner might have either been seriously injured or might have lost his life. Thus 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 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 4A(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 dehors 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. It is of course true that one month''s period as contemplated u/s 4A(3) may start running for the purpose of attracting interest under Sub-clause (a) thereof in case where provisional payment has to be made by the insured employer as per Section 4A(2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then Section 4A(2) would not get attracted and one month''s period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of Section 4A(3)(a) of the Compensation Act. But similar consequence will not follow in 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 4A(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. However if ultimately the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the delay, then penalty would get imposed on him. That would add a further sum up to 50% on the principal amount by way of penalty to be made good by the defaulting employer. 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 Workmen''s 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 Motor Vehicles 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. 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 the Compensation Act along with interest thereon, if any, as imposed by the Commissioner Sections 3 and 4A(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 4A(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.

Consideration of the judgments of the High Courts

(Emphasis added)

The aforesaid decision in the case of Ved Prakash also therefore holds that although compensation falls due on adjudication by the Commissioner acting under the Workmen''s Compensation Act, 1923, yet interest can be granted from the date of the accident.

7. The Supreme Court in a Division Bench judgment of two Judges in the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, came to a conclusion that interest becomes payable not from the date of the accident but only after one month of adjudication by the Commissioner, Workmen''s Compensation. I may note that this Division Bench decision of two Judges does not refer to the earlier binding decision of four Judges in the case of Pratap Narain.

8. The decision in the case of Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, in which the Supreme Court while accepting the ratio in the case of Musabir Ahmed held that interest can be awarded from the date of filing of the petition till the adjudication by the Commissioner, Workmen''s Compensation. It is noted that the decision in the case of Mohd. Nasir though does not refer to the decision in the case of Pratap Narain, but the same has independently laid down more or less a similar ratio, that interest is payable before adjudication by the Commissioner, Workmen''s Compensation. The decision in the case of Mohd. Nasir however gives two important conclusions. Firstly, interest is not granted from the date of the accident, but, from the date of filing of the petition before the Commissioner, and secondly for such period interest has to be below 12% per annum specified in Section 4-A of the Act.

9. The next decision which needs to be referred to is the decision in the case of Palraj Vs. The Divisional Controller, NEKRTC, In this latest judgment, a Division Bench of two Judges, has laid down the same ratio as in the case of Musabir Ahmed by holding that compensation amount becomes due only when the same is adjudicated by the Commissioner, Workmen''s Compensation. Paras 6 & 19 of the said judgment reads asunder:

6. It was also held that the Commissioner had committed an error in awarding interest from the date of filing of the claim petition and the Appellant was entitled to interest on the compensation amount only after 30 days from the date of passing of the award. The appeal was, accordingly, allowed in part, and the award passed by the Commissioner, Workmen''s Compensation, was modified and reduced fromRs.1,75,970/- to Rs. 41,405/- together with interest @ 12% per annum on the said amount from 30 days after the date of the passing of the award. The amount which was in deposit before the Court was directed to be transferred to the Commissioner, Workmen''s Compensation, Gulbarga, for disbursement. It is the said order of the learned Single Judge, which has been challenged in this appeal.

19. It will be evident that compensation assessed u/s 4 is to be paid as soon as it

falls due and in case of default in payment of the compensation due under the Act within one month from the date when it falls due, the Commissioner would be entitled to direct payment of simple interest on the amount of the arrears @12% per annum or at such higher rates which do not exceed the maximum lending rates of any scheduled Bank as may be specified by the Central Government. Both the Commissioner, Workmen''s Compensation, as also the High Court, therefore, rightly held that interest under the 1923 Act cannot be claimed from the date of the filing of the application, but only after a default is committed in respect of the payment of compensation within 30 days from the date on which the payment becomes due.

(Emphasis added)

10. The last judgment in the line of judgments is the judgment reported as UPSRTC Now Uttarakhand Transport Corporation v. Satnam Singh 2011 (2) Scale 432. A Division Bench of two Judges relying upon the case of Musabir Ahmed has held that interest can only be granted one month after the date of adjudication by the Commissioner, Workmen''s Compensation.

11. It has been held by a Constitutional Bench judgment of the Supreme Court reported as Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., that though the Supreme Court sits in Division Benches of less than five Judges, and though all such Benches are referred to as Division Benches, yet, a decision of a larger number of Judges of a Division Bench will prevail over a Division Bench of a smaller number of Judges. The ratio of the case of Raghubir Singh has thereafter been consistently applied by the Supreme Court in a catena of judgments.

12. In view of the decision in the case of Raghubir Singh in my opinion the decision in the case of Pratap Narain being a decision of four Judges will have to be prevail over the decisions of Ved Parkash, Musabir Ahmad, Palraj and UPSRTC (all supra). The judgment of Pratap Narain in categorical language lays down the ratio that compensation in fact falls due on the date of the accident and penalty, and interest also therefore, would also be payable after one month, if the compensation is not paid within one month of the date of incident/accident. The Division Bench of two Judges in the case of Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, without referring to the case of Pratap Narain has independently come to a similar ratio in holding that interest will be payable definitely at least from the date of filing of the petition before the Commissioner, Workmen''s Compensation.

13. Following the decision of the Supreme Court in the case of Pratap Narain, I hold that the workman will be entitled to interest after a period of one month of the date of the accident/incident.

14. The next issue which was canvassed by the learned Counsel for the Appellant was that the terms of the insurance policy, which has been issued by the Appellant in the present case, would not make the Appellant liable for interest on

the compensation awarded because there is no clause in the policy that interest will be payable. It is therefore argued that consequently the insurance company/ Appellant does not have any liability towards interest, and its liability is confined to the principal amount of compensation adjudged by the Commissioner, Workmen''s Compensation.

15. In my opinion, this argument is in fact an argument of desperation. The argument needs to be rejected for two reasons. The first reason is that it has now been held by a catena of decisions of the Supreme Court that where a workman is affected by a motor accident, then, an insurance company will be liable to pay the complete amount adjudicated upon in view of the provision of Section 147 of the Motor Vehicles Act, 1988. The first case in the line of these cases is the decision in case of Ved Prakash where both the provisions of Motor Vehicles Act,1988 and Workmen''s Compensation Act, 1923 were referred to and it was held that when an accident causes the death of a workman in a motor vehicle accident, then, the liability of the insurance company is categorical, absolute and complete to the extent as provided in Section 147, and which is a mandatory provision requiring the insurance company to comprehensively insure the vehicle with respect to the total compensation which is claimed and adjudicated on account of death of a workman who is covered by an insurance policy. Similar is the ratio of the decisions in the cases of Kashibhai Rambhai Patel v. Shanabhai Somabhai Parmar and Ors. 2000 SCC (L&S) 1105 L.R. Ferro Alloys Ltd. Vs. Mahavir Mahto and Another, and Kamla Chaturvedi Vs. National Insurance Co. and Others, of the judgment in the case of Kamla Chaturvedi (supra) reads as under:

6. In New India Assurance Co.''s case (supra) this Court found as a matter of fact that a contract itself provided that the interest and/or penalty imposed on the insurer on account of his/her failure to make payment of amount payable under the Act is not to be paid by the insurer. This position is clear from the paragraphs3&4 of the judgment which read as follows:

3. The two claim petitions came to be filed by the heirs and legal representatives of the deceased driver and the cleaner under the Compensation Act before the Commissioner for Workmen''s Compensation, Rajgarh District, Sirmur, Himachal Pradesh. The said applications were moved presumably by exercising option available u/s 167 of the Motor Vehicles Act which lays down that:

167. Notwithstanding anything contained in the Workmen''s Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to any person gives rise to a claim for compensation under this Act and also under the Workmen''s Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Thus these two applications were in substitution and in place of otherwise legally permissible claims before the Motor Accidents Claims Tribunal functioning under the Motor Vehicles Act. In the said claim applications, the claimants joined the Appellant-employer as well as Respondent

9-insurance company as Respondents. The Workmen''s Commissioner after hearing the parties concerned computed the compensation available to the claimant-dependants of the deceased employees. So far as the claim put forward by the heirs of the deceased driver was concerned the Commissioner awarded a sum of Rs. 88,968 as compensation. But as the compensation due was not paid either by the Appellant-employer or by the insurance company as and when it fell due the Commissioner awarded a penalty of Rs. 41,984 with interest at the rate of 6% per annum from the date of the accident till the date of payment u/s 4A(3) (a) and (b) of the Compensation Act. The entire amount of Rs. 88,968 with penalty of Rs. 41,984 and interest thereon was held payable by the insurance company to the claimants jointly and severally with the Appellant employer. The said amount was made payable by Respondent 9-insurance company on the basis that the insurance company had insured the Appellant against his liability to meet the claims for compensation for the death of employees dying in harness giving rise to proceedings against the insured employer under the Compensation Act. Similarly the Commissioner awarded a sum of Rs. 88,548 to the claimants being legal representatives of the deceased cleaner. In addition to the said amount, penalty of Rs. 44,274 with interest from the date of the accident till the date of payment was also made payable by Respondent 9- insurance company.

4. The claimants were satisfied with the said awards. Similarly the Appellant-owner was also satisfied with the said awards. However, the insurance company carried the matter in appeals before the High Court and contended that the insurance company would be liable under the contract of insurance only to make good the claims for compensation so far as the principal amounts were concerned. But it could not have been made liable to pay the amounts of penalties with interest thereon as ordered by the Workmen''s Commissioner as these amounts of penal nature were awarded against the insured owner on account of his personal default as per Section 4A(3) of the Compensation Act and for such default on the part of the insured the insurance company was not liable to reimburse the insured. As noted earlier, the said contention of Respondent 9-insurance company appealed to the High Court. The appeals were allowed and the awards of the Commissioner under the Compensation Act insofar as they fastened the liability to pay the penalty and interest on the insurance company were set aside. The amounts deposited in excess by the insurance company were ordered to be refunded to it while the remaining amounts were ordered to be paid to the claimants. It was, however, clarified that the claimants shall be at liberty to recover the amount of penalty and interest in accordance with law from the employer, Appellant herein.

7. In Ved Prakash Garg Vs. Premi Devi and others, this Court observed that the Insurance Company is liable to pay not only the principal amount of compensation payable by the insurer employer but also interest thereon if ordered by the Commissioner to be paid by the insured, employee.

Insurance company is liable to meet claim for compensation along with interest as imposed on insurer employer by the Act on conjoint operation of Section 3 and 4(A)(3)(a) of the Act. It was, however, held that it was the liability of the insured employer alone in respect of additional amount of compensation by way of penalty u/s 4(A)(3)(b) of the Act.

8. In New India Assurance Co.''s case (supra) and Ved Prakash Garg''s case (supra) was distinguished on facts. It was observed that in the said case the court was not concerned with a case where an accident had occurred by use of motor vehicle in respect whereof the Contract of Insurance will be governed by the provisions of the Motor Vehicles Act, 1988 (in short the `M.V. Act'').

19.......a contract of Insurance is governed by the provisions of the Insurance Act, 1938 (in short the `Insurance Act''), unless the said contract is governed by the provisions of a statute. The parties are free to enter into a contract as per their own volition. The Act does not contain a provision like Section 148 of the MV Act where a statute does not provide for a compulsory insurance or accident thereof. The parties are free to choose their terms of contract. In that view of the matter contracting out so far as the reimbursement of amount of interest is concerned is not prohibited by a statute.

This position has been reiterated in P.J. Narayan Vs. Union of India (UOI) and Others, In the instant case the position is different. The accident in question arose on account of vehicular accident and provisions of MV Act are clearly applicable. We have gone through the policy of insurance and we find that no such exception as was the case in New India Assurance Co.''s case was stipulated in the policy of insurance. Therefore, the Insurance Company is liable to pay the interest.

(emphasis in this para is mine)

Thus once the workman is a person who dies or is caused an injury because of an accident to a motor vehicle, then, the insurance company cannot avoid its liability to pay interest.

16. I may also, at this stage, profitably refer to Section 149(1) of the Motor Vehicles Act, 1988 and as per which an insurance company becomes comprehensively liable to pay any amount which is adjudicated by a decree or order of any Court or authority. Section 149(1) of the Motor Vehicles Act, 1988 reads asunder:

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-(1) If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (I) of section 147 (being a liability covered by the terms of the policy) (or under the provisions of Section 163(A) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have

avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(Emphasis is mine)

In my opinion, the provision of Section 149(1) is one additional reason to hold that the insurance company will be liable also to pay interest on the compensation which is adjudicated to be payable to a workman under the Employee''s Compensation Act, 1923.

17. The conclusion which therefore emerges is that when a workman is covered under an insurance policy to which the Motor Vehicles Act, 1988 applies, then, an insurer cannot contract out of any liability which would be payable on account of death of the workman caused in a motor vehicle accident as there cannot be any contracting out of a statutory provision as the contracting out would be against public interest and which is protected/provided for by the statute. The insurance policy in question thus cannot contract out of the complete liability adjudicated including interest inasmuch as the statutory provisions as found in Section 147 and 149(1) of the Motor Vehicles Act, 1988 serve a social purpose.

18. The second reason for rejecting the argument of the learned Counsel for the Appellant is that the argument put forth seeks to turn the issue of entitlement of contracting out inversely on its head. This is because the issue is that there can be a clause in the policy exempting liability for payment of interest, however, it cannot be argued exactly to the opposite that there is no liability towards interest unless there is a clause in the policy entitling the payment of interest. I am of course adverting to this argument, although in the present case the accident is an accident involving a motor vehicle and as per the decisions ending with Kamla Chaturvedi it has already been held that in cases covered by the Motor Vehicles Act, there cannot be contracting out of the statutory provisions. The Supreme Court in the decision of New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, has held that the liability for interest payable under the Workmen''s Compensation Act, 1923 can be contracted out by the insurance company only in non motor vehicle accident cases, inasmuch the liability towards interest is not a mandatory statutory liability which is required to be covered under an insurance policy, as is required to be done with respect to a motor accident under the provision of Section 147 of the Motor Vehicles Act, 1988. The decision in the case of Harshadbhai cannot be read in an inverse manner as is sought to be done by the counsel for the Appellant by contending that ordinarily an insurance company is not liable unless there is a specific clause making insurance company liable for interest. In my opinion, once an insurance company takes liability with respect to death of a workman, then, in such cases ouster of liability has to be properly established by the insurance company if it claims to be

not liable by showing a clause in the policy that there is such a clause whereby the insurance company has exempted itself for the liability towards interest and not the other way round. I therefore hold that the insurance company cannot take up a stand that it is not liable to make the payment of interest on the compensation as calculated because policy is silent in this regard, considering the insurance company takes complete liability for all compensation which is payable to the dependants of the deceased workman who dies as a result of accident in a motor vehicle. I am informed that normally an insurance policy always states that all legal liabilities of the insured will be indemnified by the insurance company and this insertion is made on the direction of the Insurance Regulatory Development Authority.

19. The final argument which was sought to be urged by the learned Counsel for the Appellant was that the workman, in this case, has disobeyed the direction of the employer and consequently the insurance company would not be liable. Once again, this argument is without any substance because the trial Court has arrived at a finding of fact, and which surely is not a question of law for the purpose of Section 30 of the Employee''s Compensation Act, 1923, that, the driver was in fact driving the vehicle as per specific directions of the employer for hill driving and it is not that the driver of the vehicle was disobeying the directions of the employer at the time when deceased/helper died as a result of the accident of vehicle.

20. In view of the above, I do not find any reason to interfere with the impugned judgment which holds that the insurance company will be liable to pay interest @ 12% per annum on the compensation as has been found to be due for the period after one month of the date of the accident. The appeal is accordingly dismissed, leaving the parties to bear their own costs.