

(2016) 02 GUJ CK 0106
In the Gujarat High Court

Case No : First Appeal No. 2135 of 2015 With Civil Application No. 11527 of 2015.

The New India Assurance Company Ltd.

APPELLANT

Vs

Govind Muniprasad and another

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (2016) 2 CLR 207

Hon'ble Judges : S.G. Shah, J.

Bench : Single Bench

Advocate : K.V. Gadhia, Advocate, for the Appellant; U.T. Mishra, Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.G. Shah, J. (Oral) - Heard Mr. K.V. Gadhia, learned advocate for the appellant and Mr. U.T. Mishra, learned advocate for respondent No. 1. Perused the record.

2. The appellant ? insurance company has preferred the appeal against the judgment and award dated 24.3.2015 by the Commissioner for Workmen Compensation at Ahmedabad in Workmen Compensation (NF) No. 3 of 2011, whereby, Commissioner has awarded an amount of Rs. 1,80,991/ towards compensation to the injured victim with 9% interest and imposed penalty of 50% of the awarded amount upon the employer being respondent No. 2 herein.

3. The main contention of the appellant ? insurance company is two folded viz.; (A) liability of the insurance company is limited as per the terms and conditions of the policy and as per the risk covered under such policy and (B) that as settled legal position, the insurance company is not liable to pay either interest or penalty in such cases because it has to simply indemnify the employer and, thereby, practically, it is the liability of the employer first to pay the amount of compensation to the injured employee and then to claim it from the insurance

company, whereby, there may not be delay in processing the payment and there may not be a question of payment of huge interest, so also the penalty.

4. So far as limited liability of insurance company is concerned, it is contended that the opponent No. 1 ? owner of the factory has insured its Workmen by disclosing the fact that the employees whose wages are less than Rs. 4,000/ per month are to be covered under the policy and, therefore, insurance company has calculated the premium in accordance with such disclosure and received only limited premium considering that none of the employees is earning salary of more than Rs. 4,000/ per month. Therefore, it is contended that even if salary of the employee is less than Rs. 4,000/ or even if it may be more than Rs. 4,000/ per month, the risk covered under the policy is for making the payment as if salary of the employee is Rs.4,000/ per month only.

5. I have perused the policy. It is not a regular policy for any motor vehicle but it is a specific policy for insuring liability under the Employee's Compensation Act and, therefore, it is a typical contract. Thereby, the liability of the insurance company can never be more or further than the accepted liability for which insured/ employer has paid the premium. Thereby, it is clear that if factory or an industrial undertaking has insured its liability to full extent for all liabilities then and then Insurance Company has to pay full awarded amount else, Insurance Company has to pay the limited amount as covered under the policy.

6. Therefore, though several other issues were raised before the trial Court, now, when insurance company has limited the scope of its appeal on above referred limited grounds only, perusal of record makes it clear that there is some substance in the appeal, if Commissioner has ignored the condition and schedule of the policy which is for restricted compensation considering Rs. 4,000/ per month as maximum salary of any employee of the employer. To that extent, amount of compensation awarded needs to be modified. Similarly, so far as interest part is concerned, the decisions in the case of National Insurance Co. Ltd. v. Mohd. Mujataba Khan reported in (1993) II CLR, 29 of Andhra Pradesh High Court and New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya, reported in AIR 2006 SC 1926 (1) makes it clear that insurance company cannot be held responsible for payment of interest and penalty in cases under the Employee's Compensation Act.

7. Therefore, when appeal is limited for only these two issues, the factum and minute details of accident and history of litigation is not much material to be recollected here, more particularly, when it is pleaded and described in the pleadings and impugned judgment. However, when Tribunal has appreciated all evidence before it and awarded the compensation, now, it becomes clear that claimant is entitled to compensation but liability of the insurance company would be limited as per its contract with the employer. Therefore, though claimant being injured victim ? employee is entitled to recover full amount of compensation from the owner, the liability of insurance company certainly needs to be reduced.

For the purpose, the impugned order needs to be modified in following manner;

(A) The liability of insurance company is reduced from Rs. 1,80,991/ to Rs. 1,41,954/ considering the maximum salary as Rs. 4,000/ per month for which insurance is taken. Therefore, the petitioner is entitled to recover amount of Rs. 39,037/ from the employer.

(B) The liability of insurance company to pay the interest is quashed and set aside, however, claimant is entitled to recover the interest on full amount of compensation from the employer.

8. The insurance company has already deposited total amount as awarded by the Commissioner because of statutory provisions to deposit it before filing such appeal and, therefore, now, Commissioner has to refund the amount of Rs. 1,13,343/ (Rs. 39,037/ being part of the amount of award + Rs. 74,306/ being interest on full amount) to the appellant ? insurance company. However, it is again made clear that claimant ? employee is entitled to recover such amount from his employer ? respondent No. 2.

9. Thereby, the appeal is allowed in above terms and hence the award is to be modified to that extent.

10. In view of disposal of main Appeal, Civil Application does not survive and the same stands disposed of accordingly.