

(2017) 05 GUJ CK 0020
In the Gujarat High Court
Case No : 770 of 2007

THE ORIENTAL INSURANCE COMPANY LTD	APPELLANT
Vs	
JENABAI RAMDHAN HAJAM & ORS.	RESPONDENT

Date of Decision : 03-05-2017

Acts Referred:

Citation : (2017) 05 GUJ CK 0020

Hon'ble Judges : Mohinder Pal

Bench : Single Bench

Advocate : MAULIK J SHELAT, MEHUL S SHAH, N P CHAUDHARY, UI VYAS

Final Decision : Disposed

Judgement

1. This appeal has been preferred against the judgment and decree passed by the Workmen Compensation Commissioner, Labour Court, Gandhidham-Kutch in W.C.F. No.06/1998; wherein, learned Commissioner has awarded a sum of Rs.1,97,060/- along with 12% interest. Aggrieved from this award, the Insurance Company has come in appeal.

2. Facts necessary for disposal of this appeal are that on 1.5.1996, the deceased was discharging his duties as the Labourer on the truck insured with the Insurance Company. However, due to slipping of foot, the labourer met with an accident and succumbed to the injuries. In Claim Petition preferred by the legal representatives of the deceased, aforementioned award has been passed. Apart from Insurance Company being held liable for compensation and interest, the Insurance Company is further held liable to pay 40% penalty. Aggrieved from this decision, the Insurance Company has preferred this appeal.

3. Learned counsel for the Insurance Company, Mr.Maulik Shelat, has submitted that in view of judgment passed by the Apex Court in case of Ved Prakash Garg V/s. Premi Devi and others reported in AIR 1997 SC 3854, the Insurance Company cannot be held liable to pay the penalty.

4. Learned counsel for the claimants is fair enough to agree with the submissions of learned counsel for the Insurance Company.

5. This Court has considered the point raised by the counsel for the Insurance Company. Perusal of the award

would show that learned Commissioner has awarded compensation of Rs.1,97,060/- and interest at the rate of 12%. He has further imposed penalty of 50%, 40% of which is to be borne by the Insurance Company while 10% has been imposed upon the employer.

6. In case of Ved Prakash Garg V/s. Premi Devi and others (supra) while dealing with this point, Hon"ble Apex Court has held as under:

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 4A 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 4A(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.

7. In view of law laid down by the Apex Court, the point in controversy has been put to rest. The Insurance Company cannot be held liable to pay as far as penalty is concerned. Accordingly, the order passed by the learned Commissioner for Workmen Compensation is modified. Employer will be further held liable to pay remaining 40% of the penalty to the claimants.

8. The Insurance Company has deposited the entire

compensation along with penalty as directed by this Court. 40% penalty plus interest accrued on this amount be returned back to the Insurance Company. However, the employer will be liable to pay the total penalty of 50% along with interest. The penalty amount be deposited within a period of 6 weeks from the date of receipt of copy of this order. After depositing of this amount, the same be disbursed to the claimants forthwith.

9. With this modification, this appeal is disposed of accordingly.