
(2009) 12 GUJ CK 0001
In the Gujarat High Court

Case No : First Appeal No. 4456 of 2009 and Civil Application No. 12800 of 2009

United India Insurance Co. Ltd.

APPELLANT

Vs

Pemi and Others

RESPONDENT

Date of Decision : 03-12-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 148

Workmens Compensation Act, 1923 — Section 3, 30, 4, 4A, 4A(1)

Citation : (2009) 12 GUJ CK 0001

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Hina Desai, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned advocate Ms. Hina Desai on behalf of appellant insurance company.

2. The appellant insurance company has challenged judgment and order passed by W. C. Commissioner, Kutch at Bhuj dated 17/10/2008 in W. C. application No. 28/2004. The Commissioner has awarded Rs. 88,548/- being a compensation with 9% interest in favour of claimant. The appellant insurance company has deposited Rs. 2,25,658/- before Commissioner on 31/3/2009 by cheque dated 27/3/2009.

3. Learned advocate Ms. Desai being aggrieved by aforesaid judgment and order, raised contention before this Court that Commissioner has committed gross error in awarding compensation in favour of claimant. She submitted that accident occurred on 11/1/1992. The claim petition filed by claimant once dismissed in default and after three years it was restored and claimant has given deposition in a year 2007. Therefore, insurance company is not liable to pay interest upon amount of compensation for entire period.

4. She also raised contention that insurance company is not liable to pay interest

because there is no terms incorporated in insurance policy, for which, insurance company held liable by Commissioner for payment of interest. She submitted that 9% interest is on higher side. Therefore, it should have to be reduced.

5. She submitted that Commissioner has not considered this important aspect that though accident is on 11/1/1992, an evidence was given by claimant in 2007. Therefore, for entire period liability of interest should not be imposed upon insurance company, for delay insurance company is not liable. However, she raised certain contention before this Court about age of deceased and income factor which has been taken into account by Commissioner and decision which has been cited by advocate of insurance company before Commissioner has not been properly appreciated. Except that no other contention has been raised by learned advocate Ms. Desai on behalf of appellant insurance company.

6. I have considered submission made by learned advocate Ms. Desai on behalf of appellant insurance company and I have also perused judgment and order passed by W. C. Commissioner. The deceased Savlaram Durgaram was serving as driver with opponent No. 1, so he was workman of opponent No. 1. The claimants were wholly dependents on income of deceased. The deceased was being paid Rs. 2100/- per month as salary given by opponent No. 1. It is a case of applicant that on 11/1/1992, deceased was working as driver on truck No. GRW 1436 of ownership of opponent No. 1. The deceased was going from Gandhidham to Ahmedabad while driving said truck on left hand side of road by observing all rules and regulations of traffic in a moderate speed, at that occasion, when deceased reached between Limbadi and Bagodara on NH No. 8 A, another truck bearing No. GRW 1436 came on wrong side of road in great and excessive speed, violating rules of traffic and collided with truck of applicant and caused accident, resulting into grave and serious injuries to deceased. The deceased succumbed to injuries and died on spot. According to claimant, deceased was died due to accident arising out of and in course of his employment with opponent No. 1. The age of deceased, was 23 years. The opponent have knowledge about said vehicular accident inspite of fact, no amount is deposited before Commissioner by any of respondent. Therefore, this being a gross negligence on the part of opponents. Therefore, amount of penalty of Rs. 44,274/- also claimed by claimant and 18% interest has been awarded.

7. It is necessary to note that before Commissioner, two respondents are there, one is owner of vehicle means employer and another is insurance company. After receiving notice from Commissioner, an employer has chosen to remain absent, no reply was filed except insurance company vide exh 30 before Commissioner. The insurance company has raised all contention and denied averment made in claim petition. Before Commissioner, certain documents are produced on record by claimant as referred in para 5. The widow of deceased applicant No. 1 was examined before Commissioner vide exh 33, who has been cross examined by learned advocate Mr. A. N. Kella for insurance company. The fact of accident, death of deceased, age of deceased and income of deceased proved by claimant

with documentary evidence. This fact has not been disproved by appellant insurance company because burden sifted on insurance company has not been satisfactorily discharged. Therefore, Commissioner has relied upon evidence of claimant as well as documentary evidence produced by claimant. No documentary evidence produced by appellant before Commissioner on behalf of employer and no oral as well as documentary evidence produced by insurance company before Commissioner. In light of this back ground, whatever evidence available before Commissioner, Commissioner has worked out compensation.

8. The accident occurred on 11/1/1992, at that relevant time, maximum salary or limit of monthly wages provided in a year 1992 Rs. 1000/- as per Section 4 of W.C. Act, but net figure was considered Rs. 400/- being 40% as per Section 4 of W.C. Act. The age of application is 23 years and deceased aged about 25 years. For proving age of deceased, School Register Form exh 32/1 was produced on record where date of birth of deceased mentioned 3/5/1969. Thereafter, considering age of 22 years, relevant factor has been taken into account i.e. 221.37 and worked out compensation comes to Rs. 88,548/- with 9% interest. The amount of penalty waived by claimant. Therefore, amount of penalty not imposed by Commissioner against opponent No. 1. The question of interest has been considered by Commissioner after considering contention raised by insurance company while deciding issue No. 4.

9. According to insurance company, insurance company is not liable to pay interest upon amount of compensation relying upon decision of Apex Court in case of New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, This decision has been considered by W. C. Commissioner. Certain other decisions have been relied by learned advocate Mr. Kella reported in K.L. Bihani Vs. Vimla Devi and Others, , New India Assurance Company Ltd. Vs. Mosmat Gondia Devi and Others, , New India Assurance Co. Ltd. Vs. Rama and G. Jitendra Rao,

10. The Commissioner has examined this issue and come to conclusion that Apex Court clearly held that in absence of contract between insured and insurer, not to pay interest, on that occasion Court may not held liable insurance company for interest but in absence of such contract in policy of insurance, Commissioner has discretionary powers to award interest. Accordingly, decisions which have been relied by learned advocate Mr. Kella are not helpful as observed by Commissioner. Ultimately, it has been held that insurance company is liable for payment of interest and awarded amount of compensation.

11. The contention which has been raised by learned advocate Ms. Desai that after 15 years from date of accident, in 2007 evidence was given by claimant, therefore, for entire period, interest amount can not be directed to be paid by present insurance company. When matter has been dismissed in default, which has been restored after three years, at that occasion, this contention has not been raised by insurance company before Commissioner. Once matter has been restored, prior period can not be ignored by Commissioner for exercising

discretionary power to direct to pay interest from date of accident or within a period of one month from amount due.

12. It is a clear case that from date of accident, 11/1/1192 immediately amount of compensation not deposited by respondent No. 1 or respondent No. 2. Therefore, there was a negligence of both respondents, that has been taken into account. Accordingly, W. C. Commissioner has rightly exercised power u/s 4(A)(3) (a) of Act. It is also necessary to note that insurance policy which has been obtained by insured under provision of Motor Vehicles Act, 1988 therefore, if accident is occurred then insurance company is liable to indemnify insured in all respect including amount of compensation and interest.

13. Learned advocate Ms. Desai not disputed fact that insurance policy which was issued in respect to truck upon which deceased was working i.e. under provision of Motor Vehicles Act. Therefore, recent decision of Apex Court in case of Kamla Chaturvedi Vs. National Insurance Co. and Others, where case of Harshadbhai Amrutbhai Modhiya case is also considered and it has been examined in detail even after considering case of Ved Prakash Garg v. Premi Devi. Ultimately, it has been decided that if insured obtained policy under provision of W.C. Act then it depends upon terms and condition of insurance policy whether it is a liability of insurance company or employer but when insurance policy was obtained in provision of Motor Vehicle Act then it is a liability of insurance company as per Section 148 of Motor Vehicles Act where statute does provide for compulsory insurance or accident thereon. The relevant discussion made in para 6, 7, 8 and 9 are quoted as under:

6. 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)(a) of the Act. 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'). 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 have been reiterated in P.J. Narayan v. Union of India and Ors. 2006 (5) SCC 200. 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.

7. The further question arises as to from which date it would be paid.

8. In National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, it was, inter alia, held as follows:

Interest is payable u/s 4A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability u/s 4A was dealt with by this Court in Maghar Singh Vs. Jashwant Singh, By amending Act 30 of 1995, Section 4A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4A(1) prescribes that compensation u/s 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication u/s 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of Sub-section (2) of Section 4A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise.

9. In view of what has been stated in Mubasir Ahmed's case (supra) the liability for interest would be in terms of what has been stated in paragraph 9 of the judgment.

14. In view of observation made by Apex Court in case of Kamla Chaturvedi and also considered finding given by Commissioner in respect to evidence led by claimant, against which no evidence led by either of respondent and there was no rebuttal evidence at all available before Commissioner. Therefore, Commissioner has rightly examined matter on the basis of legal evidence, for that, Commissioner has not committed any error which would require interference by this Court.

15. It is also necessary to note one important fact that this appeal is preferred under s 30 of Workmen's Compensation Act. As per Section 30, "An appeal shall lie to High Court from judgment and order passed by Commissioner provided that no appeal shall lie against any order unless substantial question of law is involved in appeal". The Appellate Court has no jurisdiction to entertain appeal unless same involves a substantial question of law as decided in case of Nisan Springs (Pvt) Ltd. v. Om Jain reported in 1990 LLR 93 . The mere difficulty to applying facts to the law will not amount to a substantial question of law as decided by Madras High Court in case of Asmath Bedi (dead) v. Marlmuthu reported in 1990 LLR 450 . An appeal against order of Compensation Commissioner lies only when a substantial question of law is involved as decided in case of Mangala Ben v. Dilip Motwani reported in 1998 LLR 656. The scope of Section 30 of Workmen's Compensation Act for entertaining appeal against order passed by Commissioner is very limited. The said Section 30 very clearly provides that award of Commissioner passed under aforesaid act can be challenged in appeal where substantial question of law are involved as decided in case of General Manager, Compensation Compensation Ltd. v. Bhim Yadav reported in 2003 LLR 574 . The finding given by Commissioner based on fact and legal evidence, which can not consider to be baseless and perverse. On the contrary, Commissioner has considered exhibited documents not disputed by advocate of Appellant Company and also considered that no oral evidence led by Appellant Company and no documentary evidence also produced by Appellant company. So, evidence of widow almost remain unchallenged and no rebuttal evidence produced by Appellant Company. Therefore, finding given by Commissioner can not consider to be erroneous. It is also necessary to note that after perusing appeal memo filed by appellant before this Court, no substantial question of law has been raised and not argued by advocate Ms. Desai and no substantial question of law involved in present appeal.

16. The appellant insurance company has deposited Rs. 2,25,658/- before Commissioner, Kutch at Bhuj on 27/3/2009 receipt received from Commissioner dated 31/3/2009. Therefore, W. C. Commissioner, Kutch at Bhuj is directed to pay Rs. 25,658/- by A/c payee cheque in name of Smt Pemi wd/o Savalaram Durgaram, after proper verification. Rest of amount Rs. 2,00,000/- is to be invested in any Nationalized Bank in name of respondent claimant for a period of five years, but FDR is to be remained with nazir of W. C. Commissioner. The claimants are entitled periodical interest from said FDR. Therefore, it is directed to Commissioner to incorporate condition with Nationalized Bank where amount will be invested. So widow Pemi applicant No. 1 must get monthly interest regularly from said FDR or is to be credited in bank account if account number is given by applicant No. 1 till FDR is become mature. The Commissioner must have take care that amount must have to be used by claimant, it should not be misused by any other person. The A/c payee cheque must have to be handed over to applicant No. 1 personally, should not be given in proxy or Power of Attorney holder. After a period of five years, it is open for applicant No. 1 either

to renew said FDR or to encash, it is discretion of applicant No. 1.

17. Hence, there is no substance in present appeal, accordingly, same is dismissed. Today, first appeal is dismissed, therefore, no order is required to be passed on civil application. Therefore, civil application is also disposed of.