
(1997) 12 KAR CK 0008
In the Karnataka High Court
Case No : M.F.A. No. 460 of 1989

United India Insurance Co. Ltd.

APPELLANT

Vs

Sri Allabax Nahna Sab

RESPONDENT

Date of Decision : 05-12-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147 (1) (b), 95
Workmens Compensation Act, 1923 — Section 4 A, 4 A (3) (a)

Citation : (1999) ACJ 572 : (1998) 79 FLR 473 : (1998) ILR (Kar) 1500

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : M. Sowriraju, for the Appellant; Jayakumar S. Patil, for R1 and I.G. Gachinamath, for R2, for the Respondent

Judgement

Hari Nath Tilhari, J.—This appeal arises from the judgment and award dated December 26, 1988 delivered by the Commissioner for Workmen's Compensation, Belgaum District, Belgaum in WCA. 23/1987, awarding the claimant a total sum of Rs. 83,516.25 paise as compensation under the provisions of the Workmen's Compensation Act together with interest at the rate of 6% p.a. from the date of accident upto the date of payment and providing for penalty to the tune of 25% over and above the amount of compensation awarded.

2. On behalf of the Insurance Company, the principal contention that has been raised which had been seriously pressed before me is that the Tribunal has illegally directed the amount of interest at the rate of 6% p.a. on the amount of compensation as well as penalty assessed at the rate of 25% over the total amount of compensation to be payable by the Insurance Company. Learned Counsel for the appellant contended that in view of the provisions of Section 95 of the Motor Vehicles Act, particularly proviso to Sub-section (1), the liability of Insurance Company to indemnify or to pay the compensation may be said to be there but only to the extent the compensation is payable under Workmen's Compensation Act or liability for compensation arising on account of accident

under Workmen's Compensation Act. Learned Counsel contended that u/s 4A of the Workmen's Compensation Act, the Act provides for imposition of interest and penalty being imposed by the Commissioner only on a default being committed by the employer by not making payment of compensation claimed, or atleast admitted or atleast the portion of compensation admitted on its having become due. Neither under the Insurance Policy nor under any statutory provisions of law nor under the Motor Vehicles Act, the Insurance Company can be saddled with the liability to pay nor can be said to have undertaken the liability to pay the penalty or interest imposed u/s 4A of the Act, Sri Sowriraju, learned Counsel for the appellant, contended and in support of his contentions made reference to the decision of their Lordships of the Supreme Court in the case of VED PRAKASH GARG v. PREMA DEVI AIR 1997 SCW 3775.

3. This contention of the learned Counsel for the appellant has been hotly contested by Smt. Asha holding brief for Sri Gachinmath, learned Counsel for respondent No. 2 - the owner of the vehicle. Learned Counsel contended that the Insurance Company had never put any appearance before the Workmen's Compensation Commissioner and did not raise this plea and this plea is not open to the Company to raise at this stage of appeal. Smt. Asha further contended that the vehicle was being insured and therefore all liability for payment of compensation etc. was that of the Insurance Company.

4. I have applied my mind to the contentions of the learned Counsel for the parties. This is a pure question of law which relates to interpretations of provisions of Motor Vehicles Act i.e. Section 95, read with Section 4A of Workmen's Compensation Act. A plea of law which may affect the jurisdiction of Court or authority to impose such penalty and to fasten it on whom, being a pure question of law can be permitted to be raised -even at this stage of appeal as it does not involve any question of fact or appropriation of evidence. So this question has to be considered. Primarily the objection raised by the learned Counsel for the respondents is really different. As regards the merits of the contentions and the question of liability of the Insurance Company it has to be taken note of that it is nobody's case that a special premium had been paid by the owner of the vehicle or by the employer here to the Insurance Company for requiring the Company to undertake to pay even the penalty imposed on the owner of the vehicle for his default under the Workmen's Compensation act. There being no additional premium being paid, the liability cannot be said to arise on this ground. It is only a question of law whether a statutory liability had been fastened on the Insurance Company to pay the amount of penalty or interest imposed u/s 4-A(3) of Workmen's Compensation Act, 1923. It would be profitable to refer to the material provisions of the Act. The material Act of 1939 as the occurrence had taken place in 1986. Section 95 of the Motor Vehicles Act particularly the proviso thereof is very material. It reads as, under :

"Section 95(1).....

Proviso: It is provided that a policy shall not be required (i) to cover liability in

respect of death, arising out of and in course of employment of an employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of or in course of employment, other than a liability arising under the Workmen's Compensation Act, 1923 in respect of death or bodily injury to any such employee -

(a) engaged in driving the vehicle; or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining the tickets in the vehicle;

(c) if it is a goods vehicle, be carried in vehicle;

Proviso (ii) and (iii) are not material or relevant.

5. A reading of this proviso (i) perse reveals that law makes very clear that with reference to the employees of the insured it has been clarified that the policy shall not be deemed or shall not be required to cover the liability in respect of death or injuries arising in course of employment except the liability as aforesaid arising under the Workmen's Compensation Act with reference to death or bodily injury of such an employee provided that he has been driving the vehicle or in respect of a public service vehicle, engaged as a conductor or ticket examiner. In case of other vehicles i.e., goods vehicle it is provided that if he has been carried on a goods vehicle as an employee, the liability under the Workmen's Compensation Act will stand covered and no other liability. This Section very clearly provides that the policy will only cover the limited liability in case of death of an employee or arising out of injuries in case of an employee in course of his employment limited to the conditions mentioned in the proviso and to the extent the liability arises under the Workmen's Compensation Act and no other liability.

6. Under Workmen's Compensation Act, the liability arises and is imposed u/s 3 of the Act. Sub-section (1) of the Section 3 clearly provides that,

"(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay the compensation in accordance with the provisions of this Chapter II."

So, liability under Sub-section (1) arises as soon as the accident causing injury to workman has taken place in course of or out of employment with his employer. What is the amount of compensation it has to be determined under the provisions of the Act. Section 4 provides how to determine. Section 4A of the Act provides,

"Section 4A : (1) Compensation u/s 4 shall be paid as soon as it falls due."

Compensation falls due for payment as soon as the accident takes place in course of employment or it arises out of employment. If the fact is disputed and the Commissioner finds that the accident had taken place in course of employment, liability to pay the compensation can be said to have fallen due on the date of accident had taken place. Sub-section (2) of Section 4A provides that,

"Section 4-A(2): In cases where the "employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the event of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may : be, without prejudice to the right of the workman to make any further claim."

"Section 4-A(3): Where any employer is in default in paying the compensation due under this Act, within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears/simple interest at the rate of 6% p.a. on the amount due together with, - if in the opinion of the Commissioner there is no justification for the delay, - a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty."

A reading of Sub-section (3) of Section 4A quoted above reveals that in ease of any employer is in default in paying the compensation due under the Act, within a period of one month from the date of its falling due, it will be open to the Commissioner to direct that in addition to the compensation awarded under the Act, simple interest at the rate of 6% p.a. shall be paid on the amount of compensation due and if the Commissioner finds no justification for the delay in making the payment of compensation by the employer which had been fastened on him u/s 3, Commissioner is required to impose a fine which may not exceed 50% of the amount and same shall be recovered from the employer by way of penalty. A reading of Section 3 perse reveals that penalty imposed u/s 3 is not same thing as compensation. It is distinct from compensation. Compensation is imposed and liability in relation thereto arises u/s 3 and 4 of the Act. The liability for payment of penalty and interest at the rate of 6% arises on account of default committed by the employer in making the amount of compensation due within a period of one month from the due date. So this penalty which can be imposed upto the extent of 50% of amount of compensation is something distinct in character. It is really a penalty imposed on the employer for the default committed by him. The penalty that is imposed, its nature being different from that of the compensation provided u/s 3, the amount of penalty u/s 3 cannot be equated with the compensation. Insurance Company, no doubt, has undertaken to pay of the entire compensation amount, not the penalty imposed u/s 4A. In view of the distinct nature of compensation and the penalty, it cannot be said that the Insurance Company has undertaken to pay the penalty, as unless it is shown and proved that the claimant has paid an additional premium with clear understanding between insured and insurer that if insured commits default in compliance statutory liability, insurer has to indemnify for penalty also imposed if any. So he is paying the additional premium and the Company had undertaken to indemnify or to pay off that liability. u/s 95 of the Motor Vehicles Act it has very clearly been stated that the Company shall not be liable to cover any liability except the death or bodily injury arising under the Workmen's Compensation Act. The penalty is not imposed for the bodily injury, penalty is

imposed for the default committed by the employer - owner of the vehicle. So it cannot be said that the Insurance Company is liable to pay the same. When I so opine, I find support from the decision in the case of Ved Prakash Garg v. Premi Devi and Ors. After examining the provisions of Section 147 of the Act of 1988 and its proviso which is analogous to Section 95 proviso, (i) of the old Act, and Section 4-A(3) of the Workmen's Compensation Act, Sub-section (3) as well as amended Section 4A which had been amended by Act 30/1995, Their Lordships observed as under :

"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 4A 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 4A 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 4A(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 not 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 de hors 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."

Their Lordships further observed -

"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 the 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 his 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 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."

Their Lordships in paragraph No. 19 have observed,

"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 u/s 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. Thus, a reading of interpretation of Section 4A clearly laid down that so far as the amount of penalty imposed is concerned, its nature and cause is on account of personal fault or default of the insured employer to pay the compensation within the time permissible. That is why when it is imposed it is distinct from the compensation and the amount of interest payable on the amount of compensation. But, if there is any interest on the amount of penalty, then interest on the amount of penalty is payable by the owner of the vehicle or the employer and the compensation awarded along with the amount of interest imposed on the amount of compensation which automatically get fastened as the liability of Insurance Company to disburse and reimburse and pay.

In this view of the matter, in my opinion, the appeal is to be partly allowed. The appeal is allowed and the award is modified only to this extent that the amount of compensation along with interest imposed thereon so far is concerned, the Insurance Company is liable to pay as it is a liability arising out of and under the provisions of the Act. So far as the penalty imposed u/s 4A(3) of Act 1923 i.e., the Workmen's Compensation Act, 1923 is concerned, Insurance Company cannot be held to be liable to pay and the liability to pay the amount of penalty as imposed by the Workmen's Compensation Commissioner on the Insurance Company is concerned, in my opinion, the Workmen's Compensation Commissioner erred in law in substantial manner in imposing that liability, for payment on Insurance Co.

The appeal, as such, is allowed. It is held that the Insurance Company is not liable to pay the amount of penalty imposed under the award or any interest on amount of penalty. But it shall be liable to pay the amount of compensation with interest imposed with reference to compensation. The appeal is thus finally disposed of by making it clear that it is open to the claimant to realise the amount of penalty imposed by the Workmen's Compensation Commissioner from the employer and interest thereon if any has been directed to be paid on the amount of penalty same shall be realisable from the owner of the vehicle of the claimant and not from the Insurance Company. The appeal is thus finally

disposed of as allowed. Parties to bear their own costs.