

(2005) 04 UK CK 0014
In the Uttarakhand High Court

United India Insurance Company Ltd.	APPELLANT
Vs	
Rukmani Dhami and Another	RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Employees Compensation Act, 1923 — Section 3, 4, 4A
Motor Vehicles Act, 1988 — Section 147, 149

Citation : (2005) 4 ACC 489 : (2005) 106 FLR 305

Hon'ble Judges : Rajesh Tandon, J;Brahma Singh Verma, J

Bench : Division Bench

Judgement

Rajesh Tandon, J.—This is an appeal against the judgment and award dated 2.7.2004 passed by the learned Workmen Compensation Commissioner, Pithoragarh in Workmen Claim Case No. 41 of 2003, Smt. Rukmani Dhami v. Jagdish Singh and Anr. by which a sum of Rs. 4,33,820 has been awarded to the claimant/workman, against the appellant/United India Insurance Company Limited alongwith interest @ 8% per annum from the date of filing of the application i.e., 20.6.2003 till the payment.

2. Brief facts giving rise to the present appeal are that the claimants Smt. Rukmani Dhami, wife of Sri Bharat Singh Dhami has filed the application for compensation on 20.2.2003 stating therein that late Bharat Singh was employed as a driver of Jeep No. U.P. 30/3949, which was in the ownership of one Sri Jagdish Singh. On 28th January, 2003, he was coming from Kanalichhena to Pupil by the aforesaid Jeep. As soon as the Jeep reached Mitarigaon, the Jeep met with an accident and her husband died instantaneously. It has submitted in the claim petition that the deceased was 25 years old and he was getting salary of Rs. 4,000 per month. The claimant filed a claim petition for grant of compensation along with interest as well as the amount of penalty.

3. On 8th July, 2003 a written statement was filed by the claimants along with Insurance papers, Cover Note Policy, which are on the record.

4. On the pleadings of the parties, the Claims Tribunal has framed as many as

five issues.

5. Issue Nos. 1, 2 and 3 relate to the factum of the accident and as to whether the vehicle in question was duly insured with the Insurance Company so as to indemnify the same by the Insurance Company.

6. Issue Nos. 4 and 5 relate to what amount of compensation the appellant is entitled.

7. On behalf of the claimant, there is statement that the deceased was getting a sum of Rs. 4,000 per month. All the papers in this regard were intact.

8. So far as the Issue No. 5 is concerned, learned Counsel for the appellant has submitted that the income of the deceased is not proved from the evidence on the record and as such the amount of Rs. 4,000 cannot be taken into consideration while fixing the salary of the deceased, So far as the amount of monthly income of the deceased is concerned, there is evidence on the record that the deceased was getting a sum of Rs. 4,000 per month.

9. Learned Counsel for the appellant has also submitted that the interest part to the extent of 8% cannot be levied inasmuch as there is no provision under the Workmen Compensation Act to levy the interest. The appeal, therefore, has been filed by the Insurance Company on two grounds firstly, on the salary of the deceased and secondly, on the findings with regard to the payment of interest @ 8%. So far as the findings that the deceased was getting a salary of Rs. 4,000 is concerned, the same is unrebutted in paragraph 4 of the claim petition. Following averments have been made as under:

(Hindi Matter omitted)

10. In the written statement, the said paragraph 4 has only been not admitted and no specific pleading has been taken with regard to the denial of paragraph 4. The relevant paragraph is quoted below:

That the statement of para No. 4 of the claim petition is not admitted, strict proof necessary.

11. There is also a statement of the owner regarding the payment of salary of Rs. 4,000 to the deceased. We, therefore, confirm the findings of the Claims Tribunal regarding the salary of the deceased to be Rs. 4,000. The conclusion made by the Claims Tribunal to the extent of Rs. 4,33,820, therefore, needs no interference.

12. So far as the interest part is concerned, learned Counsel for the appellants has submitted that no interest can be paid. There is no provision in the Act itself. Section 4A(3)(a) of the Workmen Compensation Act read as under:

4A(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 shall--

(a) direct that the employer shall, in addition to the amount of the arrears, pay

simple interest thereon at the rate of twelve percent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Office Gazette, on the amount due.

13. Learned Counsel for the appellant has argued that Section 4A(3)(a) refers to the penalty and not to the interest. A perusal of the aforesaid Clause (a) shows that the word simple interest has been used in the Sub-clause (a) of Sub-section (3) of Section 4 and therefore, the statement provides that in addition to the amount of the arrears, direct the employer to pay the simple interest as well.

14. A perusal of Clause (a) of Sub-section (3) shows that the word "interest" has been directed to be paid in addition to amount of arrears and the direction can be issued to the employer. There is no dispute about the fact that the Insurance Company has been indemnified on behalf of the employer to pay the amount and as such according to the statutory provision, the amount of interest shall have to be paid by the employer and has to be indemnified by the Insurance Company itself.

15. The interpretation of statute provides that if the statute provides a particular interpretation, and the interpretation is so clear than in no case, we can deviate from the simple word of the statement i.e., "pay simple interest thereon". The statute clearly provides the word "interest" and therefore, there cannot be any violation with the statutory provision so as to reach the same as a penalty as directed by the Counsel for the appellant. We, therefore, have no hesitation in holding that Sub-clause (3)(a) clearly stipulates the payment of interest and not the word "penalty".

16. In *Ved Prakash Garg v. Premi Devi II* (1997) ACC 520 (SC) : 1997 (77) FLR 637 (SC) the Apex Court has interpreted the provision of Section 4(3)(a) of the Workmen Compensation Act and has observed as under:

A conjoint reading of these provisions in the insurance policy shows that the Insurance Company insured the employer-owner of the insured motor vehicles against all liabilities arising under the Workmen's Compensation Act for which statutory coverages was required u/s 95 of the Motor Vehicles Act, 1939 which is analogous to Section 147 of the present Motor Vehicles Act noted earlier. Section 149 deals with duty of insurers to satisfy judgments and awards, against persons insured in respect of third party risks. The moot question is whether the insurance coverage as available to the insured employer-owners of the motor vehicle in relation to their liabilities under the Workmen's Compensation Act on account of motor accident injuries caused to their workmen would include additional statutory liability foisted on the insured employers u/s 4A(3) of the Compensation Act.

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. Reasons 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 employer 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.

17. Taking into consideration the aforesaid judgment of the Apex Court and law laid down by Apex Court while interpreting the provision of the statement, we are of the opinion that the interest part is in addition to the compensation and as such the Tribunal is free to impose the interest part III addition to the compensation, since the liability has been extended on the employer, Insurance Company being the identifier of the employer, cannot escape from the liability to pay the interest along with compensation itself.

18. Learned Counsel for the appellant has also pointed out certain ambiguities with regard to the information to be given to the Insurance Company or not as contained under sub-clause in paragraph 13 of the written statement. We are of the opinion that Section 4(3)(a) specifically provides the payment of interest apart from the compensation amount and, therefore, any infirmities will not escape the liability of the Insurance Company from payment of the interest.

19. In Jeol v. Law Union and Crown Insurance Company 2 K.B. King's Bench Division 863 simple principles have been laid down by the Insurance Company that no reasonable man will deem it material to tell an Insurance Company of all the casual headaches he had in his life and if he knew no more as to this particular headache then that it was an ordinary casual headache, there would be no breach of his duty towards the Insurance Company in not disclosing it. The observations are quoted below:

Now, no reasonable man would deem it material to tell an Insurance Company of

all the casual headaches he had in his life, and if he knew no more as to this particular headache than that it was an ordinary casual headache, there would be no breach of his duty towards the Insurance Company in not disclosing it. He possessed no knowledge that it was incumbent on him to disclose, because he knew of nothing which a reasonable man would deem material or of a character to influence the insurers in their actions. It was what he did not know which would have been of that character, but he cannot be held liable for non-disclosure in respect of facts which he did not know.

Insurers are thus in the highly favourable position that they are entitled not only to bona fides on the part of the applicant, but also to full disclosure of all knowledge possessed by the applicant that is material to the risk. And in my opinion, they would have been wise if they had contended themselves with this. Unfortunately, the desire to make themselves doubly security has made them depart widely from this position by requiring the assured to agree that the accuracy, as well as the bona fide, of his answers to various questions put to him by them or on their behalf shall be condition of the validity of the policy. This might be reasonable in some matters, such as the age and parentage of the applicant, or information as to his family history, which he must know as facts. Or, it might be justifiable to stipulate that these conditions should obtain for a reasonable time—say during two years during to which period the company might verify the accuracy of the statements which by hypothesis have been made bona fide by the applicant. But Insurance Companies have pushed the practice far beyond these limits, and have made the correctness of statements of matters wholly beyond his knowledge and which can at best be only statements of opinion or belief, conditions of the validity of the policy. For instance, one of the commonest of such questions "Have you any disease"? Not even the most skilled doctor after the most prolonged scientific examination could answer such a question with certainty, and a layman can only give his honest opinion on it. But the policies issued by many companies are framed so as to be invalid unless this and many other like questions are correctly—not merely truthfully—answered, though the insurers are well aware that it is impossible for any one to arrive at anything more certain than an opinion about them. I wish I could adequately warn the public against such practices on the part of insurance offices. I am satisfied that few of those who insure have any idea how the later wish to dispute the policy when it falls in. In the case of the questions to which I have referred, if it can be shown, even by the aid of the contemporaneous examination of the medical referee of the office itself, that the insured had at the time some disease, the policy is void. The disease may have been unknown, and even undiscoverable; it may have been transient and have had no effect on his future life, or on the cause of his death. These things are immaterial. If the company chose to dispute the policy, and establish a single inaccuracy in these statements, which are thus made conditions, the policy is void, and usually all that has been paid thereon is forfeit. Hence, I fully agree with the word used by Lord St. Leonards in his opinion in the case of *Anderson v. Fitzgerald* (i) to the

effect that in this way provisions are introduced into policies of life assurance which, unless they are fully explained to the parties, will lead a vast number of persons to suppose that they have made a provision for their families by an insurance on their lives, and by payment of perhaps a very considerable proportion of their income, when in point of fact, from the very commencement, the policy was not worth the paper upon which it was written.

20. In view of the aforesaid law laid down by the Apex Court, we are of the opinion that any infirmity on the part of the claimant will not give the liberty to the Insurance Company from the payment of interest as contained in Section 4A(3)(a) of the Workmen Compensation Act.

21. One more point has been pointed out by the claimant that he has received all the amount, which were due to him and as such, we do not find any infirmity in the order passed by the Tribunal.

22. We, therefore, dismiss the appeal.