

(2010) 09 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1948 of 2010

United India Insurance Company Ltd.

APPELLANT

Vs

Smt. Chhoti Devi and Others

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Employees Compensation Act, 1923 — Section 3, 30, 4A, 4A(3)
Motor Vehicles Act, 1988 — Section 147

Citation : (2010) 09 RAJ CK 0039

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—Aggrieved by the order dated 08.06.2010, passed by the Workman Compensation Commissioner, Sikar, whereby the learned Commissioner has awarded a compensation of Rs. 3,36,000/- to the claimants, the appellant-Insurance Company has approached this Court.

2. The brief facts of the case are that the claimant-respondent Nos. 1 to 4 had filed a claim petition under the Workman Compensation Act, 1923 (presently called "The Employees Compensation Act, 1923) (for short "the Act") before the learned Commissioner. According to the claimants, Kailash Chand was the husband of respondent No. 1, Smt. Chhoti Devi and he was a driver of Auto Taxi No. RJ-23-P-A-0449. While he was driving the said Taxi, on 20.10.2006 the taxi turned turtle. Consequently, Kailash Chand died on the spot. At the time of his death, Kailash Chand was twenty years old and was earning Rs. 4,000/- per month. The Taxi was insured with the appellant-Insurance Company. The Insurances Company filed its reply and specifically raised the objection that the deceased did not come within the definition of workman as defined in the Act as the deceased himself was the owner of the taxi. On the basis of the pleadings, the learned Commissioner framed six issues. In order to buttress their case, the claimants examined two witnesses and submitted few documents. On the other

hand, the Insurance Company also examined two witnesses, but did not submit any document. After hearing both the parties, as mentioned above, the learned Commissioner passed the award. Hence, this appeal before this Court.

3. Mr. Vinay Mathur, the learned Counsel for the claimants-respondents, has raised a preliminary objection about the maintainability of the present appeal before this Court. According to the learned Counsel, according to Section 30 of the Act, before an appeal can be filed, the Insurance Company is required to deposit the entire compensation amount including the interest before the learned Commissioner. However, in the present case, the Insurance Company has failed to deposit the entire amount including the interest. Therefore, the appeal is not maintainable. In order to buttress this contention, the learned Counsel has relied upon the case of State of Rajasthan and Anr. v. Smt. Rukma Devi MACD 07 (2) (Raj.) 1211.

4. On the other hand, Mr. Raaj Pal Chaudhary, the learned Counsel for the appellant Insurance Company, has argued that the Insurance Company is not liable to pay the interest amount, but is liable to pay only the principal sum to the claimant. The Insurance Company would be liable to pay the interest amount only if the said condition is contained in the insurance policy. However, in the present case, no such condition was contained in the insurance policy. Therefore, the Insurance Company is not liable to deposit the interest amount prior to filing of the appeal. In the alternative, the learned Counsel has requested that the time should be given to the Insurance Company to deposit the interest amount.

5. In rejoinder, Mr. Vinay Mathur has contended that the Insurance Company has nowhere submitted a copy of the insurance policy to make out a case that it is not liable to pay the interest amount. Thus, the contention of the learned Counsel for the Insurance Company is not corroborated by the documentary evidence. The learned Counsel has also argued that once the appeal has been filed, further time cannot be given to the Insurance Company to deposit the compensation amount. The Insurance Company cannot take the benefit of ignorance of law and plead for extension of time.

6. Heard the learned Counsel for the parties on the preliminary objection.

7. A bare perusal of the court file clearly reveals that on 20th July, 2010, the Insurance Company had deposited the entire compensation amount of Rs. 3,36,000/- before the learned Commissioner. The issue before this Court is whether the Insurance Company was liable to deposit the interest @ 12% p.a. or not? The Insurance Company claims that there is no contract between the Company and the insured that it would pay the interest amount. Since the Company has not produced the insurance policy before this Court, its contention cannot be accepted until and unless the said policy is produced.

8. The issue whether the Insurance Company is liable to pay the interest amount or not on the principal sum of compensation amount is no longer res integra. The said issue has been discussed and adjudged in the case of Ved Prakash Garg Vs.

Premi Devi and others, In the said case, the Hon''ble Supreme Court has 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 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 breadwinner 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 but otherwise liability of paying interest on delayed compensation will ipso facto follows. 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.

9. Thus, according to the Apex Court, the Insurance Company is liable to pay the interest on the compensation amount. Although in the case of *New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya and Anr.* 2006 (2) WLC 294, the Apex Court had opined that the Insurance Company is not statutorily liable to pay interest on amount of compensation, but is also held that an employer may contract otherwise with the Insurance Company. Thus, it is for the Insurance Company to show that under the contract, it is not liable to pay the interest amount. In the present case, the Insurance Company has not produced the insurance policy to make out a case that it is not liable to pay the interest amount. Hence, the Insurance Company is liable to pay the interest amount.

10. According to the receipt of the amount deposited before the learned Commissioner, the Insurance Company has deposited the principal sum of the compensation amount, namely Rs. 3,36,000/-, but it has failed to deposit the interest amount. Therefore, the preliminary objection raised by Mr. Vinay Mathur is accepted.

11. In the case of *Smt. Rukma Devi (Supra)*, a Division Bench of this Court had also held that u/s 30 of the Act, the Insurance Company is liable to deposit the entire amount prior to filing the appeal. In case it fails to do so, the appeal is not maintainable. In the present case clearly the Insurance Company has failed to deposit the interest amount. Therefore, the appeal is not maintainable.

12. Although the learned Counsel for the Insurance Company has orally requested this Court to extend the time for depositing the interest amount, but the said time cannot be extended as it is statutorily required that the entire compensation amount including the interest should have been deposited prior to filing of the appeal. The said interest amount cannot be deposited subsequently to the filing of the appeal. It is trite to state that right of appeal is not a fundamental right, but is a statutory one. Moreover, once a procedure has been prescribed by the statute for the filing of an appeal, the said procedure has to be followed, both in letter and spirit. Therefore, the Insurance Company was liable to deposit the entire compensation amount including the interest prior to filing the appeal. Lastly, the Insurance Company cannot plead that it did not know the requirement of law. For, ignorance of law is no defence.

13. For the reasons stated above, the preliminary objection raised by the learned Counsel for the respondents is, hereby, accepted; the appeal is dismissed on the ground of non-maintainability.