

National Insurance Co. Ltd. and Another Vs Atarer Nachha and Others

Court: Gauhati High Court (Agartala Bench)

Date of Decision: Aug. 4, 2008

Acts Referred: Interest Act, 1978 " Section 3
Motor Vehicles Act, 1988 " Section 117, 146, 147, 167

Citation: (2008) 4 GLT 272

Hon'ble Judges: B.D. Agarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

B.D. Agarwal, J.

In both the aforesaid appeals, I am called upon to answer as to whether in an award, passed under the provisions of

Workmen"s Compensation Act, 1923, an Insurance Company can also be held liable to pay interest on the principal amount of compensation?

2. The appeals are arising out of judgment & award dated 31.07.2007 passed by the Commissioner under W.C. Act, West Tripura, Agartala in

Title Suit No. 3 of 2005 and award dated 06.06.2007 passed in Title Suit No. 52 of 2005. The legal heirs of the deceased who were engaged by

the owners of motor vehicles to drive their respective vehicles filed both the claim cases. After full length enquiry the Commissioner has awarded

compensation of Rs. 4,33,060/- and Rs. 3,47,540/- adopting the formula prescribed under the W.C. Act. The undisputed facts are that the

offending vehicles were duly insured with the Insurance Companies on the date of the accident. Besides this, there is also no dispute that the

deceased were the employees within the meaning of Section 2 Sub-section (1)(e) of the W.C. Act. The insurance companies have also practically

not alleged any patent illegality in quantifying the compensation. In this way the appellants are only aggrieved by the direction of the Commissioner

to pay interest @12% per annum on the awarded amount from the date of filing of the claim petitions.

3. I have heard Sri A. Lodh and Sri S.M. Ali learned Counsels representing the insurance companies. The learned Counsels made elaborate

submissions even at the admission stage with regard to their liability to pay interest on the principal amount of compensation. I have also heard the

arguments of Sri Somik Deb and Sri T.D. Majumder and Sri S.B. Debnath, learned Counsel appearing for the claimants and owner of

vehicles/respondents.

4. Learned Counsel for the appellants referred to Sub-section (3) of Section 4A of the W.C. Act to contend that it is the initial duty of the

employer to pay the compensation to the victim employee or his/her legal heirs and the insurance companies cannot be fastened with any liability to

pay interest on the amount of compensation for the default committed by the employer in this regard. Learned Counsel for the appellants heavily

relied upon the judgment of the Hon"ble Supreme Court rendered in the case of New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai

Modhiya and Another, as well as a Division Bench Judgment of this Court, rendered in the case of Oriental Insurance Co. Ltd. v. Himangshu Ch.

Deb MFA-13 of 2002, D/O on 25.07.2007.

5. Learned Counsel for the respondents submitted that the legal issue regarding payment of interest by the Insurance Company is no longer res

integra inasmuch as the question has been effectively answered by the Hon"ble Supreme Court in the case of Ved Prakash Garg Vs. Premi Devi

and others, With regard to the Division Bench judgment of this Court, the learned Counsels submitted that in the aforesaid judgment, the basic

question therein was whether the risk of an Assistant in a goods carriage vehicle is covered in an Act policy. In other words, as contended by the

learned Counsel for the respondents, the question of payment of interest by the insurance company in its liability arising out of a policy under the

Motor Vehicle Act, 1988 (M.V. Act) did not fall for consideration. As such, the aforesaid judgment of Division Bench has not laid down any law

in this regard and not binding before this Bench. Learned Counsel for the respondents also submitted that u/s 167 of the M.V. Act, the victims of

motor vehicle accidents can approach either the office of the Commissioner under W.C. Act or may seek compensation under the provisions of

M.V. Act. Section 167 was referred to buttress a point that there cannot be conflicting consequences from two different statutes just because a

claimant seeks compensation in a particular forum. In other words, it was the submission of the learned Counsel that if interest is payable by an

insurance company in an award passed under M.V. Act, the same analogy would be applicable to the awards passed under W.C. Act as well. In

addition to these submissions, the learned Counsels for the respondents also took the aid of Section 3 of the Interest Act, 1978 and submitted that

unless any statute or the agreement expressly bars payment of interest the debtor is liable to pay interest on the principal amount also.

6. Admittedly under the impugned awards the insurance companies have been directed to pay the compensation with interest since the deceased

were victims of motor vehicle accidents and the liability of the owner of the vehicles was also covered under statutory policy as required u/s 146 of

the M.V. Act. To say it differently, the liability of the insurance companies has emanated from the insurance coverage of the offending vehicles.

7. In the case of Ved Prakash (supra), the Apex Court was called upon to decide the legal question whether the phrase ""liability arising under the

Compensation Act"" as employed by proviso to Section 147(1) of the Motor Vehicle Act and as found in proviso to Clause (i) of Sub-section (1)

of Section (II) of the Insurance Policy would cover only the principal amount of compensation computed under the W.C. Act and made payable

by the insured employer or whether it could also include interest and penalty imposed on the insured employer under contingencies contemplated

by Section 4-A (3)(a) and (b) of the W.C. Act.

8. After thorough analysis of the scheme of the W.C. Act, the Apex Court has held that the liability of the Insurance Company would include

payment of principal amount and also interest under certain circumstances but not the penalty levied u/s 4- A(3)(b). Since the question posed

before me regarding payment of interest is squarely covered by the aforesaid decision, it would be just and proper to extract the relevant

observations of the Apex Court in the case of Ved Prakash (supra), which are as follows:

14. 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.... 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 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 said proviso 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.

It is of course true that one month's period as contemplated u/s 4A(3) may start running for the purpose of attracting interest under Sub-clause (a)

thereof in case where provisional payment has to be made by the insured employer as per Section 4A(2) of the Compensation Act from the date

such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us

earlier then Section 4A(2) would not get attracted and one month's period would start running from the date on which due compensation payable

by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in

such contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by the

Commissioner would remain perfectly justified on the scheme of Section 4A(3)(a) of the Compensation Act.

9. In the case of Harshadbhai (supra), the Apex Court has held that the employer can contract-out his liabilities with the Insurance Company and

similarly, the Insurance Company is also entitled to contract out its liability from paying interest on the amount of compensation. The relevant

observations of the Apex Court can be profitably extracted below, which are as follows:

15. The terms of a contract of insurance would depend upon the violation of the parties. A contract of insurance is governed by the provisions of

the Insurance Act. In terms of the provisions of the Insurance Act, an insured is bound to pay premium which is to be calculated in the manner

provided for therein. With a view to minimize his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying

him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of

interest by an employer, therefore, is not prohibited in law.

10. In this way, the authority of Harshadbhai (supra) has thoroughly approved the view taken by the Hon"ble Supreme Court in the case of Ved

Prakash Garg (supra). Even thereafter, the judgment of the Apex Court rendered in the case of L.R. Ferro Alloys Ltd. Vs. Mahavir Mahto and

Another, has taken an identical view. 11. In the case of Ved Prakash (supra), the Hon"ble Supreme Court has further held that an employer may

disown his liability to pay compensation under certain circumstances, which have been spelt out in this way:

A mere look at the aforesaid provision shows that Section 4A deals with the time for payment of compensation as required to be computed u/s 4.

Sub-section (1) thereof mandates that compensation shall be paid as soon as it falls due. Sub-section (2) thereof contemplates a situation wherein

the employer though accepting his liability to pay compensation to his injured workman disputes the extent of the claim of compensation and in

such a case Sub-section (2) enjoins him to make provisional payment based on the extent of accepted liability by depositing it with the

Commissioner or to pay it directly to the workman. It is obvious that such an obligation of the employer would not arise u/s 4A, Sub-section (2) if

he totally disputes his liability to pay on grounds like the injured person being not his employee or that the accident was caused to him at a time

when he was not in the course of employment or that the accident caused to him did not arise out of his employment.

12. Coming to the contentious issue as to whether Hon"ble Division Bench of this Court has laid down a law with regard to payment of interest by

the insurance company. I have already mentioned earlier that the aforesaid judgment basically concentrates about the liability of the employer vis-a-

vis insurance company upon the death of an Assistant in a goods vehicle, whose risk not covered under the insurance policy. In that case, the

insurance company was directed to pay the entire amount of award, passed under W.C. Act, with interest. However, the judgment of the

Commissioner was over-ruled on the ground that the risk of an assistant in a motor vehicle (truck) is not statutorily covered. Hence, the insurance

company was totally absolved from its liability and the award was directed to be satisfied by the employer. After this conclusion, the Hon"ble

Division Bench casually discussed the question of interest. The relevant portions of the judgment in this regard are reproduced below:

14. The question that has next been agitated by the appellant is regarding the interest part of the judgment impugned, which is also to be paid by

the insurer appellant along with the award.

15. No doubt, if the employer of the victim is found to be liable to pay the compensation, the question raised herein would call for no adjudication.

The question posed is that if it is found that the insurer remains liable to pay the compensation awarded whether the interest part of the award can

also be slapped on the insurer in view of the relevant provisions of the Workmen"s Compensation Act.

16. Because of our decision, recorded above, that the owner of the vehicle being employer of the victim shall be liable to pay the compensation

awarded in view of the legal position noticed above, it remains of academic interest only whether in the case in hand, the appellant insurer could be

made liable to pay the interest. The answer must be in the negative even if the insurer is found to be liable to pay the compensation awarded....

13. A thorough reading of the aforesaid judgment shows that their Lordships were not called upon to analyze the issue of interest liability in the light

of the judgment of the Hon"ble Supreme Court rendered in the case of Ved Prakash (supra). It is the settled position that unless the judgment

specifically deals with an issue, the judgment does not have any precedentiary value. Be that as it may, after going through the entire judgment of

the Division Bench it appears to me that the observations made with regard to interest liability are nothing but obiter opinion. That apart, I am

bound by the law laid down by the Hon"ble Supreme Court in preference to Division Bench judgment of the High Court. On these premises, I

respectfully hold that the obiter observations of the Division Bench are of no help to the appellants.

14. Section 117 of the M.V. Act empowers the Tribunal to award interest on the principal amount of compensation. Apparently, it is the

discretionary power of the Tribunal to award interest whereas Section 4A(3) of the W.C. Act is mandatory in nature for awarding interest.

Learned Counsel for the appellants repeatedly submitted that the employer shall be liable to pay interest because of his fault for not paying the

compensation to the employee the within the statutory period. In my considered opinion, the submission is misplaced in the light of the authority of

the Apex Court discussed in this judgment. Besides this, I am of the view that if the insurance company accepts its primary liability to pay the

compensation of the principal amount, it cannot avoid its subsidiary liability of interest.

15. As noted earlier, learned Counsel for the respondents also pressed into service sub section (3) of Section 3 of the Interest Act, 1978 to

contend that in absence of any exclusion clause in the agreement, any judgment or award would carry interest. For ready reference relevant parts

of Section 3(3) of the Interest Act are extracted below:

(3) Nothing in this section,--

(a) Shall apply in relation to--

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement.

(b) *****

(c) *****

16. Learned Counsel for the respondents submitted that since W.C. Act is an independent special law the provisions of Interest Act cannot be

read into the provisions of W.C. Act. I respectfully agree with the submissions of the learned Counsel for the respondents to the extent that in case

of conflicting provisions in the general law and special law, the provisions of the special law would prevail. However, both Section 4-A of the

W.C. Act as well Section 3 of the Interest Act are pari-materia and there is no conflict therein. It appears to me that the W.C. Act has been

enacted under Entry 23 and Interest Act has been enacted under Entry 8 of the Concurrent List of the Constitution. No State law covering this

field was placed before me. Besides this, since both the statutes are Central Acts there is no harm to take into consideration the provisions of

Interest Act, which is a general law, in the absence of any material conflict. Section 3 of the Interest Act permits the Courts and Tribunals to allow

interest unless there is any exclusion clause in the agreement. I have already made it clear that the present appeals are arising out of statutory Act

policy under the provisions of M.V. Act and there was no exclusion clause in the insurance policy with regard to payment of interest.

17. For the reasons alluded herein above, I answer the question holding that the appellants are liable to pay the principal amount of compensation

with interest as awarded by the Commissioner under the W.C. Act.

18. In the result, both the appeals are dismissed at the admission stage.