

(1988) 02 MP CK 0002**Madhya Pradesh High Court****Case No:** None

New India Assurance Company
Ltd.

APPELLANT

Vs

Bhukhan and Others

RESPONDENT

Date of Decision: Feb. 15, 1988**Acts Referred:**

- Employees Compensation Act, 1923 - Section 19, 30, 4A

Citation: (1989) 1 ACC 320 : (1989) ACJ 923 : (1988) MPJR 143**Hon'ble Judges:** B.M. Lal, J**Bench:** Single Bench

Judgement

B.M. Lal, J.

This appeal u/s 30 of the Workmen's Compensation Act 1923 (hereinafter referred to as the Act) is filed by the insurer against the award dated 13-12-1982 passed by the Commissioner for Workmen's Compensation, Raipur (in short the Commissioner).

One Smt. Chamrin Bai was in the employment of Seth Oil Mills, Respondent No. 5. She died on 26-8-1980 during the course of her employment. This fact is not disputed that the deceased Chamrin Bai was employed by the Respondent No. 5 as "Reja" for loading and unloading in their truck No. CPH 8748 which was insured with the appellant Insurance Company. The said truck met with an accident on 26-8-1980 at Fafadin Railway Crossing, Raipur, in which Chamrin Bai died.

On these facts the respondents No. 1 to 4 filed application claiming an amount of Rs. 17,280/- towards compensation before the learned Commissioner. They pleaded that the deceased Chamrin Bai was the wife of Respondent No. 1 and mother of Respondents No. 2 to 4, and they all were dependant on the earning of deceased Chamrin Bai.

The learned Commissioner awarded Rs. 17,280/- with interest at the rate of 6% p.a. and have also granted a sum of Rs. 11,520/- as penalty for the delayed deposit. Against this order the insurer/appellant has come up in appeal.

Learned Counsel for the appellant/insurance company vehemently submitted two folds arguments that (i) in view of the provisions of Section 19 of the Act the claimants should have preferred their claim petition before the Motor Accidents Claims Tribunal and not before the Commissioner for Workmen's Compensation; (ii) the insurer is not liable to pay penalty.

No doubt, two independent Tribunals are there viz. Motdr Accidents Claims Tribunal under the Motor Vehicles Act, 1939, and the Commissioner for Workmen's Compensation under the Workmen's Compensation Act, 1923; and both of them have concurrent jurisdiction with regard to claims for compensation.

In a case where the claimant employed in a motor vehicle sustains injuries in course of the employment due to accident of the vehicle concerned and the vehicles happens to be insured, in such circumstances the application for compensation can be presented either before the Motor Accidents Claims Tribunal under the Motor Vehicles Act or before the Commissioner under the Act of 1923; however, the option lies with the claimant only to approach any of the two forums.

Section 19 of the Workmen's Compensation Act, 1923 only bars the jurisdiction of the Civil Court and not the Tribunal. This being so, the contention raised by the learned Counsel as to the jurisdiction of the Commissioner has no force and is hereby repelled.

As far as the second ground is concerned, in accidents of motor vehicle the liability to pay compensation is upon the owner of the vehicle but where the vehicle is insured it is for the insurer to make good the compensation awarded in accordance with the terms and conditions of the policy. , The said liability of the insurer is covered under the provisions of Section 96 of the Motor Vehicles Act. Therefore, if the liability of the insurer arises for the principal amount and the same is not deposited or paid well in time within the meaning of provisions of Section 4A(3) of the Act of 1923 i.e. within a month from the date of intimation, the insurer incurs liability to pay penalty.

In the instant case the accident occurred on 26-8-1980 and immediately thereafter the Insurance company was informed by the insured and the same has been acknowledged by the Insurance company. But the insurer has not deposited the amount within a month thereof, therefore, the learned Commissioner has rightly imposed penalty as per the provisions of Section 4A(3) of the Workmen's Compensation Act, 1923. Thus the second submission of learned Counsel also fails.

Consequently this appeal has no merit and deserves to be dismissed.

In the result, the appeal is dismissed with costs, counsel's fee Rs. 750/- if certified.