

## The New India Assurance Company Limited Vs Narayan Basu and Others

**Court:** Calcutta High Court

**Date of Decision:** April 9, 2015

**Acts Referred:** Employees Compensation Act, 1923 - Section 12, 3, 4, 4A, 4-A (3)  
Motor Vehicles Act, 1988 - Section 149

**Citation:** (2015) 4 ACC 136 : (2015) ACJ 2439 : (2016) 1 AnWR 46 : (2015) 4 CHN 13 : (2015) 146 FLR 10 : (2015) 2 LLN 366

**Hon'ble Judges:** Shubhro Kamal Mukherjee, J; Subrata Talukdar, J

**Bench:** Division Bench

**Advocate:** Kamal Krishna Das and Rajesh Singh, for the Appellant; Amit Ranjan Roy, Advocates for the Respondent

**Final Decision:** Partly Allowed

### Judgement

Shubhro Kamal Mukherjee, J.

This is an appeal against judgment and award dated March 4, 2011 passed by the learned Commissioner

of the Workmen's Compensation, First Court, West Bengal, in Claim Case No. 12 of 2006.

2. By the award impugned, the learned Commissioner allowed the claim case and awarded Rs. 2,58,336/- (Rupees two lakh fifty eight thousand

three hundred thirty six) only as compensation from the insurance company.

3. The insurance company was directed to pay the amount from the expiry of one month from the date of accident till the actual payment of the

compensation together with statutory simple interest at the rate of twelve (12) per centum per annum till realisation.

4. The insurance company is the appellant before this Court.

5. Mr. Kamal Krishna Das, learned advocate appears for the appellant and submits with reference to the provisions of Sections 3, 4 and 4A of the

Employees' Compensation Act, 1923 that the liability of the insurer is to indemnify the employer for the compensation paid. It is not the

responsibility of the insurance company to pay the compensation awarded at the first instance.

6. Mr. Das submits that there is no corresponding provision like Section 149 of the Motor Vehicles Act, 1988, in the Employees' Compensation

Act, 1923. It is not the duty of the insurer to satisfy the award passed against the employer in respect of the employee at the first instance.

7. Facts are not complicated in this case. It is stated that the claimant sustained injury in his left eye and left leg in course of his employment as a

driver of the offending vehicle on July 14, 2005. The vehicle met with an accident and the claimant sustained injury on his left eye and left leg.

8. The owner of the offending vehicle appeared and filed a written statement. He, virtually, conceded the claim case and stated that as the vehicle

was under valid insurance coverage, it was the liability of the insurer to pay the compensation.

9. The insurance company, however, contested the claim case contending that it was not liable to pay any compensation.

10. The claimant produced one Dr. K. Nanda. The said physician stated that he examined the claimant. He found that the claimant suffered partial

disablement to the extent of (30) thirty per centum. The claimant's loss of earning capacity was assessed at (100) hundred per centum. The

certificate of the doctor was exhibited as Exhibit 5 in the case.

11. The learned Commissioner found that the claimant suffered disablement and loss of earning capacity to the extent of (50) fifty per centum. The

victim was 26 (twenty six) years old on the date of accident. Although the victim claimed that he used to earn Rs. 5,000/- (Rupees five thousand)

only, per month as salary, but the learned Commissioner did not accept his plea in the absence of any document. The learned Commissioner

assessed his income at Rs. 4,000/- (Rupees four thousand) only.

12. Thus, the compensation was arrived at Rs. 2,58,336/- (Rupees two lakh fifty eight thousand three hundred thirty six) only.

13. Mr. Das, as I have indicated hereinabove, strenuously argued that it was not the liability of the insurer to satisfy the awarded sum at the first

instance. It is the liability of the insurer to indemnify the employer in case he pays the awarded compensation. Under the Employee's

Compensation Act, 1923, it is the employer who has to take the initial burden to meet the claim and only, thereafter, the question of indemnification

by the insurance company will arise.

14. Mr. Das in support of his contentions cites the decisions in the cases of G. Sreedharan versus M/s. Hindustan Ideal Insurance Corporation

Limited reported in 1976 LAB I.C. 732 , Sukro Munda and Others Vs. National Insurance Company Ltd. and Others etc., (2012) ACJ 1654 :

(2011) 5 CHN 721 , Smt. Murahi Devi and others versus New India Assurance Company Limited and another reported in 2012 (3) T.A.C. 50

(Cal).

15. Mr. Das, also, refers to two decisions of the Apex Court. He refers to the decision of P.J. Narayan Vs. Union of India (UOI) and Others,

(2006) 1 ACC 159 : (2004) ACJ 452 : (2004) 136 PLR 3 : (2006) 5 SCC 200 in support of his contention that there is no statutory liability on

the insurance company. The statutory liability under the Employee's Compensation Act is on the employer. He cites the decision of New India

Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, (2006) 2 ACC 539 : (2006) ACJ 1699 : AIR 2006 SC 1926 : (2006)

131 CompCas 250 : (2006) 3 CTC 166 : (2006) 109 FLR 1074 : (2006) 5 JT 228 : (2006) 2 LLJ 782 : (2006) 143 PLR 727 : (2006) 5 SCC

192 : (2006) SCC(L&S) 973 : (2006) 1 SCR 444 Supp : (2006) 3 SLJ 448 : (2006) AIRSCW 2352 : (2006) 4 Supreme 350 and draws our

attention to the observations of the Supreme Court of India that unlike the scheme of the Motor Vehicles Act the Workmen's Compensation Act

does not confer a right on the claimant for compensation under that Act to claim the payment of compensation in its entirety from the insurer

himself. The entitlement of the claimant under the Workmen's Compensation Act is to claim the compensation from the employer.

16. Mr. Das, however, in his usual fairness, draws our attention to an unreported decision of the Supreme Court of India in the case of Mahendra

Rai versus United India Insurance Company Limited and another in Civil Appeal No. 6697 of 2014. The Supreme Court of India in Mahendra Rai

(supra) dealt with the contentions of the insurance company that the learned Commissioner had no jurisdiction under the Employee's

Compensation Act to direct the insurance company to pay compensation and it has been the owner, who was liable to pay. In dealing with such

question, the Supreme Court of India held that such contentions could not be accepted in view of the fact that the vehicle was insured with the

insurance company and that, without giving any reason, the High Court held that the insurance company, at the first instance, had no liability to

meet the awarded compensation and doubted the maintainability of the order passed by the learned Commissioner.

17. Mr. Das, however, submits that in Mahendra Rai (supra) the Supreme Court of India did not consider the decisions in P.J. Narayan (supra)

and Harshadbhai (supra). Therefore, Mr. Das wants us to follow the earlier decisions of the Supreme Court of India.

18. Mr. Amit Ranjan Roy, learned advocate appears for the claimant and submits that, when ultimately the insurance company indemnifies the

employer, there is no harm on the part of the commissioner in asking the insurance company to satisfy the award at the first instance. Moreover,

Mr. Roy submits that the insurance company can pay the awarded compensation and, thereafter, can recover the same from the employee

concerned if it is, ultimately, found that the insurance company was not liable to indemnify the employee. Mr. Roy submits that in Ved Prakash

Garg versus Premi Devi and others reported in 1998 Accidents Claims Journal page 1 and in The Oriental Insurance Company Ltd. Vs. Siby

George and Others, (2012) ACJ 2126 : AIR 2012 SC 3144 : (2012) 134 FLR 1064 : (2012) 7 JT 301 : (2013) LabIC 350 : (2012) 3 LLJ 609

: (2012) LLR 897 : (2012) 4 PLR 598 : (2012) 4 RCR(Civil) 617 : (2012) 7 SCALE 86 : (2012) 12 SCC 540 : (2012) 4 TAC 5 : (2012)

AIRSCW 4384 : (2012) 5 Supreme 254 the Supreme Court of India held that the insurance company was liable to make not only the principal

amount of compensation payable by the insured employer, but, also, any interest thereon, if ordered by the learned Commissioner, to be paid by

the insured employer.

19. Before we deal with the decisions cited by Mr. Kamal Krishna Das, we want to deal with the decision cited by Mr. Amit Ranjan Roy in Ved

Prakash Garg (supra). The issue raised in the said Ved Prakash Garg (supra) was that:

Where an employee receives a personal injury in a motor accident arising out of and in the course of his employment while working on the motor

vehicle of the employer, whether the insurance company, which has insured the employer-owner of the vehicle against third party accident claims

under Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act") and against claims for compensation arising out of proceedings under

the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Compensation Act") in connection with such motor accidents, is liable to

meet the awards of Workmen's Commissioner imposing penalty and interest against the insured employer under Section 4-A (3) of the

Compensation Act".

20. The Supreme Court of India in Ved Prakash Garg (supra) held on a conjoint operation of the relevant schemes of the aforesaid twin Acts there

was no escape from the conclusion that the insurance companies would be liable to make good not only the principal amount of compensation

payable by insured employers, but, also, interest thereon, if ordered by the Commissioner to be paid by the insured employers.

21. It is true that it was observed that the insurance company would be liable to make good not only the principal amount of compensation payable

by the insured employers, but, also, the interest thereon. Our reading of the decision, however, is that the liability of the insurer is to indemnify the

employee or, in other words, to make good the amount of compensation and interest accrued thereon. We do not think that the Supreme Court of

India held that the responsibility of the insurer was to satisfy the award passed against the employer in respect of the employee concerned at the

first instance.

22. Therefore, Ved Prakash Garg (supra) has no manner of application in relation to the question posed before us.

23. In G. Sreedharan (supra) a division bench of the Andhra Pradesh High Court held that the actual liability to pay compensation to an insured

workman was on the immediate employer of such workman, but, however, the Section did not create a right in the workman to proceed for

damages against the insurance company. The insurance company is primarily liable as per the terms of the policy to pay the damages as agreed

upon to the assured in respect of any personal injury caused to a workman by accident arising out of and in course of his employment. It was held

that Section 12 of the Compensation Act, 1923 did not empower a workman to prefer an indemnification application under Sub-section (2) of

Section 12 of the said Act before the Commissioner against the insurance company.

24. In Sukro Munda (supra) a division bench of this Court held that there was no mention of the role of the insurance company in the whole

scheme of the Workmen's Compensation Act, the question of liability of the insurance company did not arise.

25. The Supreme Court of India, however, reversed the order of Sukro Munda (supra). The order was reversed as the High Court passed the

order without giving any reason.

26. The Supreme Court of India in Sukro Munda (supra) did not consider the effects of the decisions in P.J. Narayan (supra) and Harshadbhai

(supra).

27. Our answer to this question is that the liability of the insurer is to indemnify the employer for the compensation paid. It is not the responsibility

of the insurer to pay the compensation awarded at the first instance.

28. Therefore, the appeal is allowed in part.

29. In view of disposal of the appeal, the application, filed under C.A.N. No. 8372 of 2014, becomes infructuous and is, also, disposed of.

30. The order dated March 4, 2011 passed by the learned Commissioner of the Workmen's Compensation, is modified. The

employer/respondent No. 2, namely, Alok Kumar Ghosh, is directed to pay Rs. 2,58,336/- (Rupees two lakh fifty eight thousand three hundred

thirty six) only as compensation with statutory interest of 12 per centum per annum till realisation, to the claimant/respondent No. 1, namely,

Narayan Basu @ Naran Basu.

31. However, the respondent No. 2 shall be entitled to get reimbursement of such payment from the insurer, in accordance with law.

32. The parties are directed to bear their respective costs in this appeal.

Subrata Talukdar, J.

33. I agree.

Later

34. After the judgment is pronounced, Mr. Kamal Krishna Das, learned advocate appearing for the appellant, informs this Court that the appellant

had deposited the entire awarded sum in the office of the learned Commissioner of Workmen's Compensation.

35. Liberty is granted to the appellant to apply for withdrawal of the said amount in view of the judgement passed today.

36. If an application is filed, the learned Commissioner shall consider such application in accordance with law as expeditiously as possible.

37. The office is directed to supply photostat certified copies of this, if applied for, to the learned advocates for the parties, on priority basis.

Subrata Talukdar, J.

38. I agree.