

(2011) 04 DEL CK 0277

Delhi High Court

Case No: FAO No. 293 of 2007

National Insurance Co. Ltd.

APPELLANT

Vs

Bhim Singh and Others

RESPONDENT

Date of Decision: April 5, 2011**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 147, 147(1)
- Workmens Compensation Act, 1923 - Section 3, 4A, 4A(3)

Hon'ble Judges: Mool Chand Garg, J**Bench:** Single Bench**Advocate:** Sonia Sharma, for the Appellant; Yogesh Chhabra, for the Respondent**Final Decision:** Dismissed

Judgement

Mool Chand Garg, J.

This appeal has been filed by the insurance company the Appellant against the order dated 24.05.2007 passed by the Workmen Commissioner whereby a claim filed by Respondents No. 1 & 2 against the Appellants and the third Respondent being the owner of the truck was allowed and directions were given to the Appellants and the third Respondent to pay a sum of Rs. 3,69,165/-along with interest from the date of the filing of the claim till its realization @ 12% per annum.

2. It is the second portion of the award i.e. awarding of interest and fixing the liability to pay the sum on the insurance company which has been assailed by the Appellants in this appeal before this Court by stating that the liability to pay interest can only be that of the employer and not of the insurance company.

3. Briefly stating the facts of this case are that the deceased Krishan Kumar who was employed as a driver by the third Respondent on Toyota Qualis bearing No. HR-55BT-0935 insured with the Appellant in the name of the third Respondent met with an accident and succumbed to the injuries. Since the vehicle was covered on payment of an additional premium with the Appellant, the liability to pay

compensation was fastened on the Appellants.

4. That Respondent No. 3 in their written statement admitted that the deceased was employed by him as driver and that he died during the course of employment. Liability to pay the compensation was denied by him as the vehicle was insured with the Appellant for the period from 25.04.2003 to 24.04.2004 and thus he stated that the liability to pay compensation to the dependents of the deceased workman lies with the Appellant/insurance company. The Appellants vide their written statement have denied that the deceased was employed as a driver with Respondent No. 3 or had died on account of the accident during the course of employment. They have further denied that Respondent No. 1 and 2 are the dependants of the deceased but are only legal heirs. But they have admitted that the vehicle bearing registration No. HR-55BT-0935 was insured with them in the name of the Respondent No. 3 and prayed for the claim to be dismissed.

5. The Workmen Commissioner was satisfied with the case of the dependents of the deceased regarding the claim of compensation. After the pleadings were complete and the evidence was recorded, the following conclusions were drawn by the Workmen Commissioner:

6. I have gone through the material available on record. Respondent No. 1 has admitted that deceased Krishan Kumar was employed by him as driver on his Toyota Qualis bearing registration No. HR-55BT-0935 and died on 28.09.2003 on account of the accident while driving the said vehicle during the course of employment. Admittedly, the deceased Krishan Kumar was being paid salary @ Rs. 3550/- P.M. The date of birth of deceased Krishan kumar mentioned in the License Card is 26.08.1973 years and as such at the time of his death on 28.09.2003 he had completed his 30 years of age. The claimants have filed affidavit stating therein that they are legal heirs of the deceased Krishan Kumar and the same is nowhere disputed. In view of the above admitted facts, the compensation payable to the claimants is computed as follows:

A. Relevant factor laid down under
Schedule-IV of the Act for
30 years of age.

: 207.98

B. 50% of the last drawn monthly Wages @

Rs. 3550/-

: Rs. 1775/-

C. Amount of compensation payable
to the petitioners

: Rs. 3,69,164.5 or
say Rs. 3,69,165/-

On the basis of the above findings, I hold that the claimants are entitled to receive compensation amounting to Rs. 3,69,165/- (Rupees three lakhs sixty nine thousand

one hundred and sixty five) only on account of death of deceased krishan Kumar on 28.09.2003 in the course and out of his employment with Respondent No. 1.

7. As per the provisions of the Act, the amount of compensation is payable to the workman/dependents within one month of the date of which compensation becomes dues. In this case, the incident has taken place on 28.09.2003 and the amount of compensation would have been paid to them by 27.10.2003 but the same has not yet been paid. Therefore, as per the provisions of Clause (a) of Sub-section-(3) of Section-4A of the Act, the claimants are also entitled to receive simple interest @ 12% p.a. on the amount of compensation of Rs. 3,69,165/- (Rupees three lakhs sixty nine thousand one hundred and sixty five) only w.e.f. 28.09.2003 till its realization.

8. The Respondent No. 2 has admitted that Toyota Qualis bearing registration No. HR-55BT-0935 was insured with them comprehensively. Therefore, Respondent No. 2 is liable to indemnify its insured i.e. Respondent No. 1, under the terms of policy and the liability of payment of compensation and interest thereon, to the claimants lies with Respondent No. 2.

6. The learned Counsel for the Appellant has relied upon a judgment delivered by the Hon"ble Supreme Court in the case of [New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another](#), . In view of the aforesaid judgment, based upon the policy which expressly excludes payment of interest and penalty to be imposed upon the injured employer on account of his failure to comply with the requirement of the Act, it was held that the insurance company could not be fastened with the liability to pay interest. Relevant paragraphs are 19, 20 and 21 and read as under:

19. As indicated hereinbefore, a contract of insurance is governed by the provisions of the Insurance Act. Unless the said contract is governed by the provisions of a statute, the parties are free to enter into a contract as for their own volition. The Act does not contain a provision like Section

147 of the Motor Vehicles Act. Where a statute does not provide for a compulsory insurance or the extent thereof, it will bear repetition to state, the parties are free to choose their own terms of contract. In that view of the matter, contracting out, so far as reimbursement of amount of interest is concerned, in our opinion, is not prohibited by a statute.

20. The views taken by us find support from a recent judgment of this Court in [P.J. Narayan Vs. Union of India \(UOI\) and Others](#), wherein it was held:

(1). This writ petition is for the purpose of directing Insurance Company to delete the clause in the Insurance Policy which provides that in case of compensation under the Workmen's Compensation Act, 1923, the Insurance Company will not be liable to pay interest. We see no substance in the writ petition. There is no statutory

liability on the Insurance Company. The statutory liability under the Workmen's Compensation Act is on the employer. An insurance is a matter of contract between the Insurance Company and the insured. It is always open to the Insurance Company to refuse to insure. Similarly they are entitled to provide by contract that they will not take on liability for interest. In the absence of any statute to that effect, insurance Company cannot be forced by Courts to take on liabilities which they do not want to take on. The Writ Petition is dismissed. No order as to costs.

21. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. The Appellant is not liable for the interest. However, we make it clear that the employer shall be liable to pay the amount of interest to the claimant. In the facts and circumstances of the case, there shall be no order as to costs.

7. However, the learned Counsel appearing for Respondents 1 & 2 have submitted that this is not the correct legal position. It has been submitted that there is nothing on record which excludes the insurance company from payment of interest as per the policy. It is further submitted that once there is a liability of payment of compensation on the insured i.e. the owner of the vehicle, the liability of the insurance company is co-extensive if the payment is not made within time as prescribed by the Act, the said amount is liable to be paid along with interest, of course penalty imposed if the payment of compensation is made subsequently may not be fastened upon the insurance company. It is submitted that the position of law has been clarified in the case of [Ved Prakash Garg Vs. Premi Devi and others](#), by the Apex Court. In the said judgment the Apex Court in the context of Workmen Compensation Act has been pleased to observe 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. Reason 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 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 bread-winner 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 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 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. No question of justification by the insured employer for the delay in such circumstances would arise for consideration

...

But similar consequence will not follow in case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by Section 4A(3)(b) of the Compensation Act after issuing show cause notice to the employer concerned who will have reasonable opportunity to show cause why on account of some justification on his part for the delay in payment of the compensation amount he is not liable for this penalty. However if ultimately the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the

delay, then penalty would get imposed on him. That would add a further sum up to 50% on the principal amount by way of penalty to be made good by the defaulting employer. So far as this penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Workmen's Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term "liability incurred" by the insured employer as contemplated by the proviso to Section 147(1)(b) of the Motor Vehicles Act as well as by the terms of the Insurance Policy found in provisos (b) and (c) to Sub-section (1) of Section II thereof. On the aforesaid interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner Sections 3 and 4A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by Section 4A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner.

8. I have examined the judgments cited by the counsel for the Appellant wherein the judgment delivered in the case of Ved Prakash Garg (Supra) has been referred to but it has not been distinguished. The observations made by the Apex Court in the case of [New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another](#), in the context of judgment delivered by the Apex Court in Ved Prakash Garg are reproduced hereunder:

17. Yet again in L.R. Ferro Alloys Ltd. (supra), this Court opined that if an amount of compensation is not deposited within a period of one month, the insurance company shall be liable to reimburse the owner only the amount of compensation with interest therefrom but not the penalty imposed on insurer - employer for default of payment of amount stating:

The only contention put forth before us is that the entire liability including penalty and interest will have to be reimbursed by the insurance company and this aspect has not been examined by the learned Single Judge in the High Court and needs examination at our hands. In Ved Prakash Garg v. Premi Devi this Court after examining the entire scheme of the Act held that payment of interest and penalty are two distinct liabilities arising under the Act, while liability to pay interest is part and parcel of legal liability to pay compensation upon default of payment of that amount within one month. Therefore, claim for compensation along with interest

will have to be made good jointly by the insurance company with the insured employer. But, so far as the penalty imposed on the insured employer is on account of his personal fault the insurance company cannot be made liable to reimburse penalty imposed on the employer. Hence the compensation with interest is payable by the insurance company but not penalty. Following the said decision and for the reasons stated therein, we modify the order made by the High Court to that extent. The appeal is allowed in part accordingly.

18. We are, in this case, not concerned with a case where an accident has occurred by use of a motor vehicle in respect whereof the contract of insurance would be governed by the provisions of the Motor Vehicle Act, 1988.

9. Thus, the judgment in the case of Ved Prakash Garg (supra) remained in existence and therefore holds the field. It may be observed here that the judgment in the case of Ved Prakash Garg (supra) delivered by the Apex Court pertains to Workmen Compensation Act and is not under the Motor Vehicles Act.

10. The aforesaid judgment further makes it clear that 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 hence it cannot be said that the insurance company will not pay the interest since the interest on the principal amount gets automatically foisted upon them once the compensation amount is not paid within a month from the date it fell due.

11. Bare perusal of Section 3 of The Workmen's Compensation Act, 1923 states the employer's liability for compensation states that:

3. Employer's liability for compensation - (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter

12. In view of the aforesaid, considering the judgment of the Hon'ble Supreme Court in Ved Prakash Garg, which has not been superseded by the later judgment, and the provisions contained u/s 3 of the Workmen Compensation Act and this case being the case of Workmen Compensation Act, it cannot be said that the insurance company is not liable to pay the interest along with the amount of compensation inasmuch as in terms of the contract entered into by the insurance company with the owner of the vehicle they are liable to indemnify the insured and thus to pay compensation along with interest to the dependents of the deceased. Accordingly the appeal is dismissed.

13. TCR be sent back along with a copy of this order.

CM No. 10063/2007

The balance amount of the compensation amount deposited with the Workmen Commissioner shall be released to the Respondents along with accrued interest forthwith.