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Shri Pradeep Surajbhan Agrawal Vs Shri Bapu Krishna Yedava, Sou. Phulabai Bapu Yedava and The United India Insurance Co. Ltd.

First Appeal No. 381 of 1998

Court: Bombay High Court

Date of Decision: June 11, 2004

Acts Referred:

Motor Vehicles Act, 1988 â€" Section 140

Citation: (2005) 1 ACC 76: (2004) 4 BomCR 526: (2005) 104 FLR 156

Hon'ble Judges: Nishita Mhatre, J

Bench: Single Bench

Advocate: R.V. More, for the Appellant; T.S. Ingale, for the Respondent

Judgement

Nishita Mhatre, J.

This Appeal has been filed under Workmen's Compensation Act. The only question involved is whether the employer

can be saddled with liability of payment of interest and penalty when an insurance policy was in existence on the relevant date.

2. The accidental death occurred on 7.3.1990. The parents of the deceased filed an application under the Workmen's Compensation Act claiming

compensation as the appellant was the owner of the truck No. CNB 5694 as also the employer of the deceased. The application was allowed

after; evidence has been recorded. The Commissioner came to the conclusion that the compensation payable is an amount of Rs. 10,548/-. The

amount awarded by way of an interim relief on 16.8.1990 in the interim application filed u/s 140) of the Motor Vehicles Act for no fault liability

should be deducted. The insurance company had deposited the amount of Rs. 25,000/- on 16.8.1990 as awarded by the Commissioner on

23.5.1990.

3. Mr. More, learned Advocate for the Appellant, submits that in any event the employer should not be liable to pay the interest on the

compensation. He relies on the judgment in the case of L.R. Ferro Alloys Ltd. Vs. Mahavir Mahto and Another, . There is no doubt that this

judgment is applicable to the facts of the present case. The employer is not liable to pay interest on the compensation when admittedly the

insurance policy was in operation.

4. As regards the penalty, Mr. More submits that there is no justification for awarding any penalty much less the maximum penalty. He submits that

the Commissioner ought to have taken into consideration the fact that the owner that is the appellant herein informed the insurance company of the

accident. He also urges that the Commissioner ought to have taken into consideration the fact that Rs. 25,000/- had been deposited by the

insurance company on 16.5.1990. Not having done so, the learned Advocate submits that the Commissioner should justify the imposition of 50%

by way of penalty.

5. On a perusal of the evidence and the judgment impugned, I see no reason to set aside the same in respect of the penalty awarded. Except a

bald statement being made by the employer that he had informed the insurance company, there is nothing on record to show that such an

information was given to the insurance company. Moreover, the primary liability is that of the owner and the owner can be indemnified by the

insurance company. The scheme of the Act is not that the workman or the injured should wait for the liabilities of the owner, insurance company to

be sorted out before any compensation is paid. The employer is required to deposit the amount at least within one month when it falls due. Not

having done so, the appellant cannot now seek any indulgence and submit that 50% of penalty should not be imposed.

- 6. Appeal is allowed partly. The interest awarded shall be paid by the Insurance Company.
- 7. All interim orders vacated. The penalty awarded shall be paid by the Appellant within eight weeks from today.
- Certified copy expedited.