

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 2076 of 2007**  
**With**  
**FIRST APPEAL No. 2078 of 2007**  
**To**  
**FIRST APPEAL No. 2082 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE KS JHAVERI :**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NEW INDIA ASSURANCE CO. LTD. - Appellant(s)**  
**Versus**  
**VEJIBEN HIRA KOLI & 2 - Defendant(s)**

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**Appearance :**

MR HASMUKH THAKKER for Appellant(s) : 1,  
 MR MUKESH H RATHOD for Defendant(s) : 1,  
 RULE SERVED BY DS for Defendant(s) : 2,  
 DELETED for Defendant(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 30/09/2008**

**ORAL JUDGMENT**

1. These appeals are directed against the judgment and award dated 01.12.2006 passed by the learned Commissioner under the Workmen's Compensation Act, Kutch at Gandhidham, in W.C.F. No. 48/2005 to 53/2005, whereby, the said applications were partly allowed and the appellant – Insurance Company was held liable to pay compensation, interest @ 12% p.a. from the date of incident till its realization and penalty @ 50% on the amount of compensation.

2. The brief facts of the case are that on 09.06.1998, while deceased Babu Hira Koli and his wife, deceased Shantiben Hira Koli, were working in respondent no.1 – Company as labourers of respondent no.2 – Contractor, a cyclone took place on account of which huge waves from the nearby sea gushed the area. As a result thereof, both of them were swayed away in the sea by the high tides and ultimately, lost their lives.

3. The legal heirs and representatives of the deceased, therefore, filed the aforesaid applications before the Court below claiming compensation under the provisions of the W.C. Act. The Court below, after appreciating the evidence on record, partly allowed

the same and also imposed interest and penalty on the appellant – Insurance Company. Being aggrieved by the same, the appellant has preferred these appeals before this Court.

4. Heard learned counsel for the respective parties and perused the documents on record. The main contention of the appellant – Insurance Company is that the Court below has committed serious error in imposing penalty and interest on it in view of the fact that under the provisions of the Workmen's Compensation Act, 1923, the Insurance Company is not liable to pay penalty and interest.

5. It is well-settled by now that an Insurance Company is not liable to pay penalty under the provisions of the W.C. Act, 1923. Therefore, without discussing the said issue in detail, the direction of the appellant – Insurance Company qua imposing 50% penalty is quashed and set aside.

6. So far as the issue of interest is concerned, it would be beneficial to consider the ratio laid down by the Hon'ble Apex Court in the case of *New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya* reported in *2006 A.C.J. 1699* wherein, it has been that an Insurance Company cannot be held liable for interest if the terms of the contract of insurance, entered into by and

between the employer and the insurer, does not specifically provide the liability of the insurance company in that regard.

7. In the instant case, the insurance policy specifically provides that the Insurance Company is not liable to pay interest and / or penalty imposed on the insured on account of its failure to comply with the requirements as laid down under the Act. Thus, in light of the settled legal position and the principle laid down in the aforesaid decision, the appellant – Insurance Company cannot be fastened with the liability to pay penalty and interest.

8. For the foregoing reasons, the appeals are partly allowed. The impugned judgment and award of the trial Court is modified to the extent that the direction qua imposing interest and penalty on the appellant – Insurance Company is quashed and set aside. The rest of the impugned award is not disturbed. The amount deposited by the appellant - Insurance Company, qua the principal amount, will be paid to the claimants and the amount, qua penalty and interest, will be refunded to the Insurance Company. The appeals stand disposed of accordingly. No order as to costs.

*[K. S. JHAVERI, J.]*

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