

ORISSA HIGH COURT : CUTTACK

F.A.O. NO.519 OF 2008

From an order dated 26.08.08 passed by Shri J. Parida,
Commissioner for Workmen's Compensation-cum-Asst. Labour
Commissioner, Cuttack in W.C. Case No.216-/2002.

The Divisional Manager, Appellant
National Insurance Co. Ltd.

-Versus-

Mallika Rana and others Respondents

For Appellant : M/s. Dr. A.K. Rath, A.K. Panda,
A.K. Nath & S.S. Das

For Respondents : M/s. B. Mohanty, S.K. Mohanty &
R.N. Das,
(For Respondents 1 & 2)

Decided on 03.09. 2009

P R E S E N T:

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. Das, J.

The insurer has filed this application under section 30 of the Workmen's Compensation Act calling in question the legality of the award/judgment passed in W.C. Case No.216-D/2002 by the Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioners, Cuttack, on various grounds.

2. The main thrust of argument of Dr. Rath, learned counsel appearing for the insurer is that the policy and the proposal, which were marked as Ext. A before the Commissioner

(copy of which has been produced before me) discloses that for five numbers of crewmen in the Trawler, the employer paid Rs.150/- as premium. Dr. Rath, therefore, contends that for each crew member the amount paid was Rs.30/- as premium to the insurer as per the tariff framed by the Tariff Advisory Committee on 06.08.99 which has been revised again on 07.05.02. The liability of the insurer for a member of the crew for whom Rs.30/- has been paid as premium is limited to Rs.50,000/-. He has produced the copies of the tariffs fixed by the Tariff Advisory Committee along with a Misc. Case filed today in Court, to admit the same as additional evidence under Order 41 Rule 27, C.P.C.

3. On perusal of the findings of the Commissioner, though I do not find any reason to admit the above document into evidence, nevertheless on perusal of the same, it appears that tariff of Rs.30/- per crew member was fixed as premium for covering the liability of Rs.50,000/- for each crew member who are not named in the policy/proposal. In the instant case, the name of the deceased has been mentioned in the proposal for whom extra premium was paid. It is, therefore, clear that the contention raised by Dr. Rath that the liability of insurer will be up-to Rs.50,000/- cannot be accepted.

4. Mr. Mohanty, learned counsel for the claimants submits that there is absolutely no illegality in the impugned award

where the learned Commissioner discussed in detail the Clauses of the policy including the exclusion clause and came to the finding that the liability of the insurer is not limited to Rs.50,000/-. He is also brings to the notice of this Court the written statement filed by the insurer, before the court below, where the insurer took a stand that the liability of the insurer is limited to the statutory liability governed under the Workmen's Compensation Act.

5. Considering such submission of the insurer in the written statement that its liability is governed under the Workmen's Compensation Act and the calculation made by the Commissioner while passing the award, I do not find any illegality to have been committed by the said Commissioner. No substantial question of law has been set forth to be adjudicated with regard to section 30 of the Workmen's Compensation Act.

6. Dr. Rath, also contended that the accident did not arise in course of employment. It is an admitted case that the Trawler was in the sea and the deceased was an employee engaged in fishing where the Trawler capsized while on sea and, therefore, it cannot be said that the death of the deceased did not occur in course of employment. This contention is, therefore, unacceptable.

7. With regard to the direction in the impugned award for payment of interest on the compensation amount, Dr.Rath, learned counsel for the appellant relying upon the decision in the

case ***Kamla Chaturvedi v. National Insurance Co. and others***, 2009(1) T.A.C. 1 (S.C.) submits that the Supreme Court in the said case has laid down that the liability for payment of interest would be in terms of what has been stated in paragraph-9 of the judgment in the case of ***National Insurance Co. Ltd. v. Mubasir Ahmed and another*** (2007) 2 SCC 349. The Supreme Court in the case of Kamla Chaturvedi (supra), was considering the legality of the judgment of a learned Single Judge of Madhya Pradesh High Court, Jabalpur Bench, by which, he allowed the Misc. Appeal filed by the insurance company. In the said Misc. Appeal before the High Court, the award made by the Commissioner for Workmen's Compensation was challenged. In appeal before the High Court, the only ground raised was that a claim arising under the W.C. Act, 1923, interest is not payable by the insurance company as there was no contract by the insurer with the insured with regard to the payment of interest. The High Court relying upon the judgment of the Supreme Court in the case of ***New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya***, (2006) 5 SCC 192 held that the direction for payment of interest by the insurance company was not sustainable and the insurance company was not liable to pay any interest. The Supreme Court on finding that the accident in question arose on account of vehicular accident and the provisions of M.V. Act are clearly applicable and upon going through the policy

of insurance, recording that there was no such exception as was found in the case of New India Assurance Co. Ltd. (supra), held that the insurance company is liable to pay the interest. Paragraph-9 of the judgment in Mubasir Ahmed's case is as follows:-

“Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under section 4-A was dealt with by this Court in Maghar Singh v. Jashwant Singh . By amending Act 30 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A(1) prescribes that compensation under section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is “falls due”. Significantly, legislature has not used the expression “from the date of accident”. Unless there is adjudication, the question of an amount falling due does not arise.”

8. Learned counsel for the claimants relying upon the judgment in ***Oriental Insurance Co. Ltd. v. Mohd. Nasir and another***, 2009 (3) T.A.C. 598 (S.C.) contends that the Supreme

Court in the said case analyzing the law on the point has categorically held in paragraph-23 as follows:-

“The said provision, as it appears from a plain reading, is penal in nature. It, however, does not take into consideration the chargeability of interest on various other grounds including the amount which the claimant would have earned if the amount of compensation would have been determined as on the date of filing of the claim petition. Workmen Compensation Act does not prohibit grant of interest at a reasonable rate from the date of filing of the claim petition till an order is passed. Only when sub-section (3) of Section 4-A would be attracted, a higher rate of interest would be payable wherefor a finding of fact as envisaged therein has to be arrived at. Only because in a given case, penalty may not be held to be leviable, by itself may not be a ground not to award reasonable not be held to be leviable, by itself may not be a ground not to award reasonable interest.”

The impugned award being in conformity with the said judgment of the Supreme Court with regard to payment of interest, the same should not be interfered with.

9. Considering the ratio of the above cited cases, it is clear that clause (3) of Section 4-A of the W.C. Act, 1923 can be attracted, where a default occurs in paying the compensation due within one month from the date it fell due. The date when such compensation fell due to be paid, is the date when the award is passed and if the said awarded amount is not paid within one month from the date of the award, interest at the rate of 12% is leviable.

10. In the instant case, the learned Commissioner for Workmen's Compensation has directed that if the amount awarded is not paid within thirty days from the date of receipt of the order, 12% interest per annum shall be paid on the compensation amount from the date of accident, i.e., 28.10.2001 till the actual payment. Hence, the Commissioner has gone wrong in directing calculation of interest in case of default, from the date of accident, which should be from the date of the judgment, i.e., 26.8.2008. The amount was deposited before the Commissioner by the appellant-insurer on 2.12.2008. The insurance company is, therefore, liable to pay the interest on expiry of thirty days from the date of receipt of the award/order till the date of deposit of the compensation amount at the rate of 12% per annum.

11. In the case of Oriental Insurance Co. Ltd. (supra), the Supreme Court also held that section 4-A(3) does not take into consideration the chargeability of interest on various other grounds including the amount which the claimant would have earned if the amount of compensation would have been determined as on the date of filing of the claim petition. The Workmen's Compensation Act does not prohibit grant of interest at a reasonable rate from the date of filing of the claim petition till the order is passed. Considering the above, the Supreme Court in the said case directed payment of interest at the rate of 7.½% per annum from the date of filing of the

application till the date of the award and, thereafter, as per the impugned award in the said case.

12. This Court, therefore, applying the ratio of the aforesaid case, directs that the insurance company shall pay interest @ 7.½% per annum at simple rate from the date of filing of the application till the date of passing of the award and interest at the rate of 12% per annum from thirty days after receipt of the copy of the award till the compensation amount was deposited before the W.C. Commissioner. As the awarded amount has already been deposited with the Commissioner, the same shall be disbursed in favour of the claimants. The appellant-insurer shall deposit the interest amount as directed above within eight weeks from today before the Commissioner and on such deposit being made, the same shall also be disbursed in favour of the claimants.

With the aforesaid directions, the appeal is disposed of.

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M.M. Das, J.

*Orissa High Court, Cuttack.
 September 3rd 2009/Himansu.*
