

THE HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

MFA(WC) NO.7 of 2009

Sri Subhash Ranjan Debbarma,
S/o Late Jogesh Chandra Debbarma,
Resident of Joyguru, Dhaleswar,
Agartala, P.S/ East Agartala,
District - West Tripura.

..... *Appellant.*

- Vs -

1. Sri Birendra Chandra Ghosh,
S/o Late Radha Charan Ghosh.
2. Smti. Tulsi Ghosh
W/o Shri Birendra Chandra Ghosh.
Both are residents of Harihardula,
P.S & Sub-Division - Bishalgarh,
District - West Tripura.
3. The Divisional Manager,
National Insurance Company Ltd.,
Agartala Division,
42, Akhaura road, Agartala,
P.S. West Agartala,
District - West Tripura.

..... *Respondents.*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant : Mr. G K Nama, Advocate.

For the respondents : Mr. K Bhattacharjee, Advocate.

Date of hearing & judgment : **27.09.2013.**

Whether fit for reporting : No.

JUDGMENT & ORDER(ORAL)

This appeal is directed against the award, dated 10th March 2008, passed by the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in T.S.(W.C)62 of 2003,

whereby he awarded a sum of Rs.3,22,855/- in favour of the claimants along with interest @ 12% per annum. However, the liability to pay the interest was fixed on the appellant-employer and the insurance company was exonerated.

2. In this appeal the only question is whether the insurance company can be held liable to pay the interest on the amount awarded under the Workmen's Compensation Act, 1923 or not.

3. On behalf of the insurance company reliance is placed on the judgment of the Apex Court in *PJ Narayan vs. Union of India and others 2004 ACJ 452*. In my view this judgment does not help the insurance company. It only provides that the insurance company can incorporate a condition in the policy that it shall not be liable to pay interest. Thus it is obvious that if the insurance company wants to avoid its liability there must be an exclusion clause in the policy itself.

This matter is no longer *res-integra*. The Apex Court in *New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya and another* in (2006) 5 SCC 192 , dealing with this issue, held as follows :

"By reason of the provisions of the Act, an employer is not statutorily liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer, the insurer shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor Vehicles Act does not have a statutory liability. The Act does not contain a provision like Section 147 of the Motor Vehicles Act. Section 17 of the Act does not provide for any restriction in the matter of contracting

out by the employer vis-à-vis the insurer. The terms of a contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provisions of the Insurance Act. In terms of the provisions of the Insurance Act, an insured is bound to pay premium which is to be calculated in the manner provided for therein. With a view to minimize his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in law."

4. No doubt an insurance company can enter into contract whereby it is not liable to pay the interest. If the insurance company wants to escape its liability to pay the interest, it must produce and prove the insurance policy and show that there is a clause therein that the insurance company is not liable to pay interest. In case, the insurance company does not discharge the onus which lies upon it, it must be held liable to pay the interest.

5. In the present case, I have gone through the insurance policy and it contends no exclusion clause. Therefore, the insurance company is liable to pay interest on the awarded amount from one month after the date of the accident and not from the date of filing of the claim petition. The accident took place on 13th August, 2003 and therefore, the claimants are entitled to interest from 13th September, 2003 till the principal amount of the compensation was deposited before the Commissioner, Workmen's Compensation. The entire interest be deposited within 4(four) months from today. The

appeal is allowed and the award passed by the learned Commissioner, Workmen's Compensation is accordingly modified.

6. The appeal is disposed of in the aforesaid terms.

Send the LCRs forthwith.

CHIEF JUSTICE