

**THE HIGH COURT OF TRIPURA**  
**\_A\_G\_A\_R\_T\_A\_L\_A\_**

*MFA(WC) NO.11 of 2008*

Sri Dilip Kumar Kar,  
S/o Late Makhan Lal Kar,  
Village Math Choumohani,  
P.S East Agartala, District - West Tripura.

(Represented by the Constituent Attorney  
Sri Pramath Nath, S/o Late Girija Kanta Nath of  
village Nagaon, P.S. Kamalpur, Dhalai, West Tripura).

..... *Appellant.*

- Vs -

1. Smt Gita Saha (Roy),  
W/o Late Ratan Kumar Roy.
2. Sri Rajat Roy alias Ananta Roy,  
S/o Late Ratan Kumar Roy.
3. Smt Champa Roy,  
D/o Late Ratan Kumar Roy.
4. Shri Prasanta Roy,  
S/o Late Ratan Kumar Roy.

(Sl. Nos.3 and 4 being minor are represented  
by their natural guardian i.e. respondent no.1)

All are resident of Khejur Bagan, Kathalbagan,  
East Barjala, District - West Tripura.

5. M/s National Insurance Co. Ltd.,  
(Represented by its Divisional Manager, Divisional  
Office Akhaura Road, Agartala, West Tripura.)

..... *Respondents.*

**BEFORE**  
**HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

|                            |   |   |
|----------------------------|---|---|
| For the appellant          | : | Mr. T D Majumder, Advocate.                     |
| For the respondents        | : | Mr. P K Pal, Advocate,<br>Mr. A Lodh, Advocate. |
| Date of hearing & judgment | : | <b>27.09.2013.</b>                              |
| Whether fit for reporting  | : | <b>No.</b>                                      |

## JUDGMENT & ORDER(ORAL)

This appeal is directed against the award, dated 31<sup>st</sup> March, 2008, passed by the learned Commissioner Workmen's Compensation, West Tripura, Agartala in T.S.(W.C)24 of 2006, whereby he awarded a sum of Rs.4,10,200/- in favour of the claimants along with interest @ 12% per annum. However, the liability to pay the interest was fixed on the appellant and the insurance company was exonerated.

2. The short issue involved in this appeal is whether the insurance company could be exonerated of its liability to pay interest in terms of the Workmen's Compensation Act, 1923.

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. 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.

5. It appears that the learned Commissioner was wrong in awarding interest only from 24<sup>th</sup> April 2006 till the date of judgment. As per Section-4 of the Workmen’s Compensation Act,

compensation falls due as soon as the accident takes place. Section 4A gives one month's time to the owner/insurer to deposit the amount. Therefore, interest is payable from one month after the date of accident. The accident took place on 24<sup>th</sup> April, 2006 and therefore, the claimants are entitled to interest from 25<sup>th</sup> May, 2006 till payment/deposit of the awarded amount.

6. In view of the above discussions, the appeal is allowed and the Insurance Company is directed to pay the entire interest, liability of which was fastened upon the appellant, within 4(four) months from today.

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

Send down the records of the lower Court forthwith.

**CHIEF JUSTICE**