

A

NEW INDIA ASSURANCE CO. LTD.

v

HARSHADBHAI AMRUTBHAI MODHIYA AND ANR.

APRIL 28, 2006

B

[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

C

*Workmen's Compensation Act, 1923—Section 3—Contract of Insurance entered into by Employer with an Insurance Company to indemnify for compensation payable under the Act—Commissioner awarded compensation with interest to the claimant—Appeal by Insurance Company before High Court challenging the payment of interest—High Court dismissed the appeal—Correctness of—Held, employer is statutorily liable to pay workman compensation under the Act—On facts, payment of any interest/penalty is specifically excluded under the contract of insurance—Hence, employer, and not the insurance company, is liable to pay interest to the claimant—Insurance Act, 1938—Motor Vehicles Act, 1988.*

D

E

An employer entered into a contract of insurance with appellant-insurance company to indemnify for compensation payable under the Workmen's Compensation Act, 1923. On an application filed by a claimant for grant of compensation under the Act, the Commissioner directed the appellant to pay the claimed sum with interest thereon. The appellant filed an appeal under section 30 of the Act before High Court challenging the payment of interest to the claimant under the terms of contract of insurance. The High Court dismissed the appeal.

F

In appeal to this Court, the appellant contended that as per the terms of the contract of insurance entered into with the employer, the payment of interest and/or penalty is specifically excluded and hence, it is not liable to pay interest to the claimant.

G

The respondent contended that he is entitled to receive interest on the awarded sum which may be made payable either by the insurance company or by the employer.

Allowing the appeal, the Court

H

**HELD:** *Per S.B. Sinha, JJ:*

1.1. Under the Workmen's Compensation Act, 1923, 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, 1988 does not have a statutory liability. [448-G, H; 449-A]

1.2. Where a statute does not provide for a compulsory insurance or the extent thereof, the parties are free to choose their own terms of contract. Contracting out, so far as reimbursement of amount of interest is concerned, is not prohibited by a statute. Under the terms of insurance entered into, the appellant is not liable for the interest. The employer shall be liable to pay the amount of interest to the claimant. [451-B, F]

*P.J. Narayan v. Union of India and Ors.*, (2004) ACJ 452, referred to.

*Ved Prakash Garg v. Premi Devi and Ors.*, [1997] 8 SCC 1 and *L.R. Ferro Alloys Ltd. v. Mahavir Mahto & Anr.*, [2002] 9 SCC 450, referred to.

**PER P.K. Balasubramanyan, J. (concurring):**

1.3. On a construction of the contract of insurance, the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under the Workmen's Compensation Act, 1923. Unless one is in a position to void the exclusion clause concerning liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Act, the insurer cannot be made liable to the insured for those amounts. [452-B, C]

1.4. The obligation for the insurer clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. Unlike the scheme of the Motor Vehicles Act, 1988, the Workmen's Compensation Act does not confer a right on the claimant for compensation under that Act to claim the payment of compensation in its entirety from the insurer himself. The entitlement of the claimant under the Workmen's Compensation Act is to claim compensation from the employer. As between the employer and the insurer, the rights and obligations would depend upon the terms of the insurance contract. Construing the contract

- A** involved here it is clear that the insurer has specifically excluded any liability for interest or penalty under the Workmen's Compensation Act and confined its liability to indemnify the employer only against the amount of compensation ordered to be paid under the Workmen's Compensation Act. The High Court was, therefore, not correct in holding that the appellant-insurance company is also liable to pay the interest on the amount of compensation awarded by the Commissioner. The workman has to recover it from the employer.

[453-A, B]

*Cehave v. Bremer*, (1976) QB 44 and *Reardon Smith v. Hanson Tange* (1976) 1 WLR 989, referred to.

- C** *Colinvaux's Law of Insurance 7th Edition*, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2333/2006.

From the final Judgment and Order dated 10.5.2005 of the High Court of Gujarat at Ahmedabad in F.A. No. 1061/2005.

- D** Mrs. Pankaj Verma and Kiran Suri for the Appellant.

Shridhar Y. Chitale, Bhuwan Puri and Abhijat P. Medh for the Respondents.

- E** The Judgment of the Court was delivered by

**S.B. SINHA, J.** Leave granted.

- F** Whether interest is payable by an insurer while indemnifying the insured the amount of compensation awarded against him under the Workmen's Compensation Act, 1923 (for short "the Act") is the question involved in this appeal which arises out of a judgment and order dated 10.05.2005 passed by the High Court of Judicature of Gujarat, Ahmedabad in First Appeal No. 1061 of 2005.

- G** Before adverting to the contentions raised by the parties herein, we may notice the contract of insurance. By reason of the said contract, the insurer has made itself liable to reimburse the insured if during the period of insurance any employee in his immediate service sustained personal injury by accident or disease arising out of and in the course of employment by the insured in the business wherefor he would be liable to pay compensation either under:

- H** (i) the law set out in the Schedule or

(ii) at common law

However, therein a proviso has been added which reads as under:

“Provided that the insurance granted hereunder is not extended to include:

- (i) any interest and/ or penalty imposed on the insured on account of his/her failure of comply with the requirements laid down under the W.C. Act, 1923 and
- (ii) any compensation payable on account of occupational diseases listed in part ‘C’ of schedule III of the W.C. Act, 1923.”

Sanjay Amrutbhai Modhiya was a sales man employed by the insured-Respondent No. 1. He met with an accident on 24.8.1996. His heirs and legal representatives filed an application for grant of compensation before the Workmen’s Compensation Court, Godhra claiming a sum of Rs. 2,25,220/-. The Appellant herein raised a contention as regards its limited liability in terms of the contract of insurance. By an order dated 1.6.2004, the Commissioner of Workmen’s Compensation awarded a sum of Rs. 2,25,220/- with 9% interest thereon from the date of filing of application till realization in favour of the claimants. A direction was also issued to the Appellant to pay the said amount. The appeal thereagainst was preferred by the Appellant in terms of Section 30 of the Act which by reason of the impugned judgment has been dismissed relying on or on the basis of the decisions of this Court in *Ved Prakash Garg v. Premi Devi and Ors.*, [1997] 8 SCC 1 and *L.R. Ferro Alloys Ltd. v. Mahavir Mahto and Anr.*, [2002] 9 SCC 450.

The insurer is in appeal before us.

The learned counsel appearing on behalf of the Appellant would submit that having regard to the contract of insurance, the insurer was not liable to pay any interest on the awarded sum.

Mr. Shridhar Y. Chitale, learned counsel appearing on behalf of the Respondent, besides disputing this position, would submit that even if the insurer is not liable, the First Respondent would be liable therefor.

Section 3 of the Act provides for the employer’s liability to pay compensation in the event a workman suffers personal injury by an accident arising out of and in the course of his employment. The amount of

A compensation is required to be calculated in accordance with the provisions contained therein.

Section 4 of the Act provides for the mode and manner in which the amount of compensation is to be calculated. While so calculating, the Workmen's Compensation Court is required to take into consideration the factors enumerated therein.

Section 5 provides for the method of calculating wages.

Section 8 stipulates the manner in which the amount of compensation would be distributed. Sub-section (4) of Section 8 reads as under:

C "4) On the deposit of any money under sub-section (1), as compensation in respect of a deceased workman the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made."

E Section 12 of the Act provides for the mode and manner of payment of compensation by a principal employer and/ or his contractor. Section 17 of the Act nullifies contracting out in the following terms:

F "Contracting out. - Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act."

G 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

H

liability. Section 17 of the Act does not provide for any restriction in the matter of contracting out by the employer *vis-a-vis* the insurer. A

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. B C

In *Ved Prakash Garg* (supra), this Court undoubtedly held that in terms of the contract of insurance entered into by and between the employer and the insurer under the provisions of the Motor Vehicles Act, 1988, which would also apply in a given case to the claim under the provisions of the Workmen's Compensation Act, the insurer would also be liable for payment of interest stating: D

".....A conjoint reading of these provisions in the insurance policy shows that the insurance company insured the employer-owners of the insured motor vehicles against all liabilities arising under the Workmen's Compensation Act for which statutory coverage was required under Section 95 of the Motor Vehicles Act, 1939 which is analogous to Section 147 of the present Motor Vehicles Act noted earlier. Section 149 deals with "Duty of insurers to satisfy judgments and awards against persons insured in respect of third-party risks". The moot question is whether the insurance coverage as available to the insured employer-owners of the motor vehicles in relation to their liabilities under the Workmen's Compensation Act on account of motor accident injuries caused to their workmen would include additional statutory liability foisted on the insured employers under Section 4-A(3) of the Compensation Act. E F

The question posed for our consideration is required to be resolved in the light of the aforesaid statutory schemes of the two interacting Acts. It is not in dispute and cannot be disputed that the respondent-insurance companies concerned will be statutorily as well as contractually liable to make good the claims for compensation arising out of the employers' liability computed as per the provisions of the H

A Compensation Act. The short question is whether the phrase “liability arising under the Compensation Act” as employed by the proviso to sub-section (1) of Section 147 of the Motor Vehicles Act and as found in proviso to clause (i) of sub-section (1) of Section II of the insurance policy, would cover only the principal amount of compensation as computed by the Workmen’s Commissioner under the Compensation Act and made payable by the insured employer or whether it could also include interest and penalty as imposed on the insured employer under contingencies contemplated by Section 4-A(3)(a) and (b) of the Compensation Act.”

C Yet again in *L.R. Ferro Alloys Ltd.* (supra), this Court opined that if an amount of compensation is not deposited within a period of one month, the insurance company shall be liable to reimburse the owner only the amount of compensation with interest therefrom but not the penalty imposed on insurer - employer for default of payment of amount stating:

D “The only contention put forth before us is that the entire liability including penalty and interest will have to be reimbursed by the insurance company and this aspect has not been examined by the learned Single Judge in the High Court and needs examination at our hands. In *Ved Prakash Garg v. Premi Devi* this Court after examining the entire scheme of the Act held that payment of interest and penalty are two distinct liabilities arising under the Act, while liability to pay interest is part and parcel of legal liability to pay compensation upon default of payment of that amount within one month. Therefore, claim for compensation along with interest will have to be made good jointly by the insurance company with the insured employer. But, so far as the penalty imposed on the insured employer is on account of his personal fault the insurance company cannot be made liable to reimburse penalty imposed on the employer. Hence the compensation with interest is payable by the insurance company but not penalty. Following the said decision and for the reasons stated therein, we modify the order made by the High Court to that extent. The appeal is allowed in part accordingly.”

We are, in this case, not concerned with a case where an accident has occurred by use of a motor vehicle in respect whereof the contract of insurance would be governed by the provisions of the Motor Vehicle Act, 1988.

H As indicated hereinbefore, a contract of insurance is governed by the

provisions of the Insurance Act. Unless the said contract is governed by the provisions of a statute, the parties are free to enter into a contract as for their own volition. The Act does not contain a provision like Section 147 of the Motor Vehicles Act. Where a statute does not provide for a compulsory insurance or the extent thereof, it will bear repetition to state, the parties are free to choose their own terms of contract. In that view of the matter, contracting out, so far as reimbursement of amount of interest is concerned, in our opinion, is not prohibited by a statute.

The views taken by us find support from a recent judgment of this Court in *P.J. Narayan v. Union of India and Ors.*, (2004) ACJ 452 wherein it was held:

“1. This writ petition is for the purpose of directing Insurance Company to delete the clause in the Insurance Policy which provides that in case of compensation under the Workmen’s Compensation Act, 1923, the Insurance Company will not be liable to pay interest. We see no substance in the writ petition. There is no statutory liability on the Insurance Company. The statutory liability under the Workmen’s Compensation Act is on the employer. An insurance is a matter of contract between the Insurance Company and the insured. It is always open to the Insurance Company to refuse to insure. Similarly they are entitled to provide by contract that they will not take on liability for interest. In the absence of any statute to that effect, insurance Company cannot be forced by Courts to take on liabilities which they do not want to take on. The Writ Petition is dismissed. No order as to costs.”

For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. The Appellant is not liable for the interest. However, we make it clear that the employer shall be liable to pay the amount of interest to the claimant. In the facts and circumstances of the case, there shall be no order as to costs.

**P.K. BALASUBRAMANYAN, J. 1.** I respectfully agree and would allow the appeal as proposed by my learned brother.

2. The law relating to contracts of insurance is part of the general law of contract. So said Roskill Lord Justice in *Cehave v. Bremer*, ([1976] Q.B. 44). This view was approved by Lord Wilberforce in *Reardon Smith v. Hanson-Tangen*, (1976) [1 WLR] 989, wherein he said “it is desirable that the same



- A legal principles should apply to the law of contract as a whole and that different principles should not apply to the different branches of that law". A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. (See Colinvault's Law of Insurance 7th Edition paragraph 2-01). A policy of insurance has therefore to be construed like any other contract. On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under the Workmen's Compensation Act. Unless one is in a position to void the exclusion clause concerning liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts.

3. Section 17 of the Workmen's Compensation Act voids only a contract or agreement whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment and insofar as it purports to remove or reduce the liability of any person to pay compensation under the Act. As my learned brother has noticed, in the Workmen's Compensation Act, there are no provisions corresponding to those in the Motor Vehicles Act, insisting on the insurer covering the entire liability arising out of an award towards compensation to a third party arising out of a motor accident. It is not brought to our notice that there is any other law enacted which stands in the way of an insurance company and the insured entering into a contract confining the obligation of the insurance company to indemnify to a particular head or to a particular amount when it relates to a claim for compensation to a third party arising under the Workmen's Compensation Act. In this situation, the obligation of the insurance company clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. Unlike the scheme of the Motor Vehicles Act the Workmen's Compensation Act, does not confer a right on the claimant for compensation under that Act to claim the payment of compensation in its entirety from the insurer himself. The entitlement of the claimant under the Workmen's Compensation Act is to claim the compensation from the employer. As between the employer and the insurer, the rights and obligations would depend upon the terms of the insurance contract. Construing the contract involved here it is clear that the insurer has specifically excluded any liability for interest or penalty under the

Workmen's Compensation Act and confined its liability to indemnify the employer only against the amount of compensation ordered to be paid under the Workmen's Compensation Act. The High Court was, therefore, not correct in holding that the appellant - insurance company, is also liable to pay the interest on the amount of compensation awarded by the Commissioner. The workman has to recover it from the employer. A

B.S.

Appeal allowed. B