Ved Prakash Garg vs Premi Devi & Ors on 25 September, 1997

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Author: S.B.Majmudar

Bench: S.B. Majmudar, V.N. Khare

PETITIONER:
VED PRAKASH GARG

Vs.

RESPONDENT:
PREMI DEVI & ORS.

DATE OF JUDGMENT: 25/09/1997

BENCH:
S.B. MAJMUDAR, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

WITH [Civil Appeal No. 15700 of 1996] J U D G M E N T S.B.Majmudar.J. In these three appeals by special leave, a short ut ticklish question arises for consideration. It runs as under :

> "Where an employee receives a personal injury in a motor accident arising out of and in the motor vehicle of the employer, whether the insurance company, which has insured the employer-owner of the vehicle against third party accident claims under

> Motor Vehicles Act, 1988 (hereinafter referred to as 'the Motor Vehicles Act') and against claims for compensation arising out of proceedings under the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Compensation Act') in connection with such motor accidents, is liable to meet the awards of Workmen's Commissioner imposing penalty and interest against the insured employer under Section 4A(3) of the Compensation Act."

The High Court of Himachal Pradesh in the impugned judgments has answered this question in the negative and against the insured employer. For coming to that conclusion reliance is placed by the said High Court in a decision of a Division Bench of Karnataka High Court in the case of Oriental Insurance Co. Ltd. v. Raju & Ors. 1994 ACJ 191 and the judgment of a learned Single Judge of the Gujarat High Court in the case of Jayantilal & Co. v. Garasia Ravirba udesinh & Ors. 1992 ACJ 286. Identical view is taken by a Division Bench of the Gujarat High Court in the case of Gautam Transport, Bhavnagar v. Jiluben Huseinbhai & Ors. 1989 ACJ 587. The decision of a learned Single Judge of the Delhi High Court in the case of Oriental Insurance Co. Ltd. v. Hasmat Khatoon & Ors. 1989 ACJ 862 has also fallen in line. While on the other hand a learned Single Judge of Gauhati High Court in the case of Oriental Fire and General Ins. Co. Ltd. V. Nani Bala Devi & Anr. 1987 ACJ 655; a Division Bench of the Orissa High Court in the case of Khirod Nayak v. Commissioner for Workmen's Compensation & Ors. 1992 ACJ 76; a learned Single Judge of the Madhya Pradesh High Court in the case of New India Assurance Co. Ltd. v. Guddi & Ors. 1994 ACJ 1134 and a learned Single Judge of the Rajasthan High Court in the case of United India Insurance Co. Ltd. v. Roop Kanwar & Ors. 1991 ACJ 74 have answered this question in the affirmative against the insurance company. There is another judgment of a Division Bench of the Gujarat High Court in the case of Radhabehn & Ors. Mulji Kanji Dhord & Ors. 1994 ACJ 404 which has adopted middle course and has answered the question partly in the affirmative so far as the imposition of interest contemplated by Section 4A(3)(a) of the Compensation Act is concerned and partly in the negative so far as the imposition of penalty on the owner-employer under Section 44(3)(b) is concerned. before we proceed to resolve the aforesaid conflict of decisions it will be profitable to note a few background facts leading to these appeals.

Civil Appeal Nos. 15698-15699 of 1996 These two appeals arise out of a motor accident wherein the owner of a motor truck, appellant in these appeals, had entrusted the said trust for driving to one Pritam Singh and has employed one Hem Raj to be a cleaner attached to the said truck. The said truck met with an accident on 15th February 1992 near Village Pulwahai on Kumarsain Dhamla Road in the State of Himachal Pradesh. In the said accident driver Pritam Singh and cleaner Hem Raj died on spot. It is the case of the appellant, owner of the truck, that having come to know about the accident on 16th February 1992 he immediately informed the Branch Manager of respondent no.9- insurance company about the accident. According to the appellant, respondent no.9-insurance company had insured the appellant comprehensively against all the risks arising out of the use of the said motor vehicle.

That still the insurance company though bound to pay the heirs of the deceased-employees appropriate compensation as per the insurance cover, did not carry out the said obligation.

The two claim petitions came to be filed by the heirs and legal representatives of deceased driver and cleaner under the Compensation Act before the Commissioner for Workmen's Compensation, Rajgarh district, Sirmur, Himachal Pradesh. The said applications wee moved presumably by exercising option available under Section 167 of the Motor Vehicles Act which lays down that 'notwithstanding anything contained in the Workmen's Compensation Act, 1923 where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both' - Thus these two applications wee in substitution and in place of otherwise legally permissible claims before the Motor Accidents Claims Tribunal functioning under the Motor Vehicles Act. In the said claim applications, the claimants joined the appellant-employer as well as respondent no.9-insurance company as respondents. The Workmen's Commissioner after hearing the parties concerned computed the compensation available to the claimant-dependents of the deceased employees. So far as the claim put forward by the heirs of the deceased driver was concerned the Commissioner awarded a sum of Rs. 88,968/- as compensation. But as the compensation due was not paid either by the appellant-employer or by the insurance company as and when it fell due the Commissioner awarded a penalty of Rs. 41,984/- with interest at the rate of 6% per annum from the date of the accident till the date of payment under Section 4A(3)(a) and (b) of the Compensation Act. The entire amount of Rs. 88,968/- with penalty of Rs.41,984/- and interest thereon was held payable by the insurance company to the claimants jointly and severally with the appellant-employer. The said amount was made payable by respondent no.9-insurance company on the basis that the insurance company had insured the appellant against his liability to meet the claims for compensation for the death of employee dying in harness giving rise to proceedings against the insured employer under the Compensation Act. Similarly the Commissioner awarded a sum of Rs. 88,548/- to the claimants being legal representatives of the deceased cleaner. In addition to the said amount, penalty of Rs. 44,274/- with interest from the date of the accident till the date of payment was also made payable by respondent no.9-insurance company.

The claimants were satisfied with the said awards. Similarly the appellant-owner was also satisfied with the said awards. However, the insurance company carried the matter in appeals before the High Court and contended that the insurance company would be liable under the contract of insurance only to make good the claims for compensation so far as the principal amounts were concerned. But it could not have been made liable to pay the amounts of penalties with interest thereon as ordered by the Workmen's Commissioner as these amounts of penal nature were awarded against the insured owner on account of his personal default as per Section 4A(3) of the Compensation Act and for such default on the part of the insured the insurance company was not liable to reimburse the insured. As noted earlier, the said contention of respondent no.9-insurance company appealed to the High Court. The appeals wee allowed and the awards of the Commissioner under the Compensation Act in so far as they fastened the liability to pay the penalty and interest on the insurance company were set aside. The amounts deposited in excess by the insurance company were ordered to be refunded to it while the remaining amounts were ordered to be paid to the claimants. it was, however, clarified that the claimants shall be at liberty to recover the amount of penalty and interest in accordance with law from the employer, appellant herein.

The appellant is the owner of a motor truck on which deceased Prakash Chand was working as a driver, is the sole heir and claimant for compensation. Between 20th and 21st August 1992 the said truck met with a accident on Kalka- Simla national highway in the State of Himachal Pradesh. it resulted in instantaneous death of driver Prakash Chand. It is the case of the appellant insured owner of the truck, that he informed respondent no.2-insurance company which had insured the appellant against risks arising out of the use of the insured motor vehicle. That he was insured comprehensively for all risks and the insurance company was supposed to have immediately contracted the legal representatives of the deceased driver and should have paid the compensation to the bereaved family which it failed to do.

Respondent no.1, widow of the deceased driver, filed a Claim Petition before the Commissioner for Workmen's Compensation exercising her option under Section 167 of the Motor Vehicles act. The Workmen's Commissioner after hearing the parties awarded a sum of Rs. 81,540/- as compensation along with interest and further directed that in the event of failure to pay the said amount within one month the penalty at the rate of 30% per annum on the principal amount was to be paid by respondent no.2-insurance company. The award obviously was passed jointly and severally against the appellant-owner as well as respondent no.2-insurance company. The said award was challenged only on behalf of respondent no.2-insurance company before the High Court. The High Court took the very same view which it took in the companion matters and exonerated respondent no.2-insurance company from its liability to make good award of penalty amount as well as interest amount on the principal amount of Rs.81,540/-. Identical order in these terms was passed in this case as it was passed in common in the other two appeals as stated earlier.

Rival Contentions Learned counsel for the appellant-owners of the motor vehicles who were admittedly employers of deceased workmen contended before us that the view taken by the High Court of Himachal Pradesh in the impugned judgments and identical view taken in the decisions of the High Court referred to earlier exonerating the insurance company of its liability for making good the claim for compensation flowing out of the orders of additional interest and penalty as imposed by the Workmen's Commissioner under Section 4a(3) of the Compensation Act were not justified on the scheme of the Compensation Act read with the Motor Vehicles Act. That on the contrary the decisions of High Courts representing the contrary view laid down correct law. It was alteratively contended that in any view of the matter at least the middle course adopted by the Division Bench of the Gujarat High Court in the case of Radhabehn (supra) deserved to be uphled.

On the other hand learned counsel for respondent- insurance companies submitted that on the schemes of the Compensation Act and the Motor Vehicles Act the insurance companies would be liable to meet the liability of the insured employer-owners of the respective vehicles to the extent of the principal amounts of compensation which were made payable to the claimants by the insured employers by the Workmen's Commissioner. So far as penalty amounts by way of additional interest and additional compensation as contemplated by Section 4A(3) were concerned they were made payable by the insured employers for their own default and for such default on the part of the insured, the insurance companies would not be liable and consequently they could not be made to reimburse the said amounts to the insured. That such claims would be dehors the contractual liability flowing from the insurance policy as well as it would be against the relevant statutory

scheme of the Motor Vehicles Act read with the Compensation Act. It was, therefore, contended that the view taken by the Himachal Pradesh High Court in the impugned judgments in favour of the insurance companies and identical view taken by the other High Courts falling in line represented the correct legal position and deserved to be upheld.

Schemes of the Acts Before we deal with the rival contentions and have a look at the divergent viewpoints expressed by the different High Courts on this question, it will be necessary to keep in view the relevant statutory schemes in the light of which this controversy has to be resolved. The Compensation Act deals with the provisions for payment by certain classes of employers to their workmen of compensation for employment injuries caused by accident. There is no dispute between the parties that the deceased drivers and cleaner in these cases were workmen employed by the appellant-employers. Section 3 of the compensation Act deals with 'Employer's liability for compensation'. sub-section (1) thereof lays down that 'if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II'. It is also not in dispute that fatal personal injuries were caused to the workmen by accidents which arose out of and in the course of their employment because of which they were working on the motor vehicles of the appellant-employers when they met their ends on account of motor accidents. Section 4 of the Compensation Act deals with 'Amount of compensation'. It lays down the statutory scheme for computing the compensation payable in cases of the types of accidental injuries suffered by the workmen concerned. The employer, on a conjoint reading of Sections 3(1) and 4(1) of the insured workmen under circumstances contemplated by these provisions. Then follows Section 4A of the Compensation Act with which we are directly concerned. It is, therefore, necessary to extract it in extenso. The said Section during the relevant time, in 1992, when the accidents were caused read as under :

> "4-A, Compensation to e paid, when due and penalty for default. - (1) Compensation under section 4 shall be paid as soon as it falls due. (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the cases may be, without prejudice to the right of the workman to make any further claim.
>
> (3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest at the rate six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty."

The said Section was further amended by Act 30 of 1995 with effect from 15.9.1995 and in the amended form it now reads as under :

"4A, Compensation to be paid when due and penalty for default.-(1) Compensation under section 4 shall be paid as soon as it falls due. (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of to workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(a) Direct that the employer shall, in addition to the amount of the arrears pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct hat the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

PROVIDED that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

A mere look at the aforesaid provision shows that Section 4A deals with the time for payment of compensation as required to be computed under Section 4. Sub-section (1) thereof mandates that compensation shall be paid as soon as it falls due. Sub-section (2) thereof contemplates a situation wherein the employer though accepting his liability to pay compensation to his injured workman disputes the extent of the claim of compensation and in such a case sub-section (2) enjoins him to make provisional payment based on the extent of accepted liability by depositing it with the Commissioner or to pay it directly to the workman. It is obvious that such an obligation of the employer would not arise under Section 4A sub-section (2) if he totally disputes his liability to pay on grounds like the injured person being not his employee or that the accident was caused to him at a time when he was not in the course of employment or that the accident caused to him did not arise out of his employment. IF such disputes are raised by the employer then his obligation to make provisional payment under sub-section (2) of Section 4A would not arise and his liability would depend upon the final adjudication by the Workmen's Commissioner at the end of the trial. in that light when sub-section (3) of Section 4A is seen it becomes obvious that once the compensation due under the Act becomes ascertained either provisionally under sub-section 92) or finally on adjudication by the Commissioner and if the employer does not pay the same within one months from

the date it thus falls due, the Commissioner can direct under sub-clause (a) of Section 4a(3) interest at the rate provided therein and also penalty as contemplated by sub-clause (b) thereof as per the amended Section 4A(3) of the Compensation Act but even under the unamended Section 4A(3) which applied at the relevant time a clear distinction is made by the Legislature between the imposition of penalty by way of a further sum not exceeding fifty per cent of compensation found payable when it is not paid within the requisite time as and when it fell due.

Thus even in the scheme of unamended Section 4A(3) or as per the amended Section 4A(3) read with clauses (a) and

(b) thereof, it becomes clear that additional amount of compensation can be levied against the defaulting employer by way penalty if it is shown that there is no justification for the delay on his part in making good the compensation amount to the claimant. Interest payable on the principal amount, if not paid when it fell due, is not considered by the Legislature to be a penalty. This is further highlighted by the proviso to Section 4A(3) as substituted by Act 30 of 1995 which clearly indicates that a penalty amount under clause (b) cannot be imposed against the employer without giving him reasonable opportunity to show cause. No such show cause notice is comtemplated while imposing interest on default of payment of the principal amount on the part of the employer as per Section 4A(3)(a).

Absence of this provision is obviously based on the legislative intent that interest on principal amount is not by way of penalty. Therefore, the employer need not be heard in this connection. A simplicity default in payment of compensation within the time of one month from the date it fell due would automatically attract the provision of simple interest under Section 4A(3) as per the rate prescribed therein and for such imposition of interest no question of justification for the delay is countenanced by the Legislature. But while imposing penalty justification for delay would b a good defence for the employer for meeting such claim for penalty. The same aspect is further highlighted by Section 4A(3)(a) of the Compensation Act as existing on the Statute book at present which shows that the interest payable under sub-section (3A) is to be paid to the workman or his dependant while the penalty imposed is to be credited to the State Government. It is in the light of the aforesaid statutory Government. It is in the light of the aforesaid statutory scheme of Section 4A that the question posed for our consideration has to be resolved.

Section 19 of the Compensation Act also deserves to be noted at this stage. Sub-section (1) thereof lays down that 'if any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner'. Sub-section (2) of Section 19 bars the jurisdiction of Civil Court to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner, or to enforce any liability incurred under this Act. As per the aforesaid provisions any dispute between the employer-insured on the one hand and the insurance company, that is said

to have insured the employer against such claims for compensation under the Compensation Act, on the other has to be resolved in default of agreement between them by the Commissioner functioning under the Compensation Act and not by any Civil Court. It may be mentioned at this state that learned counsel for the contesting respondent-insurance companies made it clear before use that it is not their contention that the insurance companies which have insured the employers against such risks and claims are not liable to make good the principal amounts of compensation as awarded by the Commissioner o the claimants and that the insurance companies under the said claims. But their only grievance is against the liability sought to be enforced against them for reimbursing the claims for additional compensation by way of penalty and interest as imposed on the insured employers under section 4A(3) of the Compensation Act.

We may now turn to the relevant provisions of the Motor Vehicles Act. Reference to these provisions becomes necessary because the workmen concerned suffered personal injuries of fatal nature while they were working on motor vehicles of their employers. if they had suffered from any personal injuries during the course of and arising out of the employment while working the factory premises of the employers or while carrying on their service obligations as employees at any other place under the instructions of the employers, the question of interaction of the Compensation Act and the Motor Vehicles Act would not arise and such claims for compensation would have squarely been governed only by the Compensation Act.

Hence it becomes necessary for us to turn to the scheme of Motor Vehicles Act foisting liability on the insurance companies which have insured such vehicles against third party risks undertaken by the insured. Chapter XI of the Motor Vehicles Act deals with 'Insurance of motor vehicles against third party risks'-Section 146 lays down the necessity for insurance against third party risk and provides that 'no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force i relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter'- Section 147 deals with 'Requirements of policies and limits of liability'-Sub- section (1) or Section 147 along with its proviso is relevant for our present purpose. Hence it is extracted as under:

> "147. Requirements of policies and limits of liability.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-
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> (A) is issued by a person who is an authorised insurer; and
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> (b) insures the person of classes of persons specified in the policy to the extent specified in sub- section (2)-
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place; Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death or, or bodily injury to, any such employee-

(a) engaged in driving the vehicle or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

Sub-clause (b) of Section 147(1) read with the proviso lays down a statutory scheme of compulsory coverage of liability incurred by the employer vis-a-vis his employees when they sustain injuries by the use of motor vehicles during their employment and on account of motor accidents arising out of and in the course of their employment and on account of motor accidents arising out of and in the course of their employment. But the statutory coverage for such liability would be limited t the extent of liability of the insured employer arising under the Workmen's Compensation Act in respect of death or bodily injury to such employees.

As the motor accidents resulted in fetal injuries to the employees who were either driving or were being carried in the goods carriage as cleaner whatever liability was incurred by insured owners of the goods vehicles in connection with proceedings arising out of the Compensation Act was covered by the statutory liability of the respondent-insurance companies. The very same result would follow when we turn to the relevant clause of the insurance policies to which our attention was invited by learned counsel to the appellants. Section II in the Insurance Policy of respondent no.9-insurance company which had insured the appellant, dealt with 'liability to third parties'-Relevant clause of sub-section (1) of Section II of the said Policy reads as under:

"1. Subject to the Limits of Liability the Company will indemnify the Insured against all sums including claimant's cost and expenses which the Insured shall become legally liable to pay in respect of

(i) Death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor Vehicle.

(ii)..... ....

PROVIDED ALWAYS that:-

(a)..... ....

(b) Except so far as necessary to meet the requirements of Section 92A and Section 95 of the Motor Vehicles Act, 1939, the Company shall not be liable in respect of death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment.

(c) Except so far as is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923, the Company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim arises."

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 Vehicle 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 f 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 of account of motor accident injuries caused to their workmen would include additional statutory liability foisted on the insured employers under Section 4A(3) of the Compensation Act.

Consideration of the question The question posed of 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 respndent-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 Compensation Act. The short question is whether he phrase 'liability arising under the Compensation Act' as employed by the proviso to sub-section (1) of Section 247 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 4A(3)(a) and (b) of the Compensation Act.

On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the

principal amounts of compensation payable by insured employers but also interest thereon, if ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Workmen's Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. such an accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the identical provisions under the very contracts of insurance reflected by the Policy which would made the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer under Section 3 read with Section 4A of the Compensation Act. All these provisions represent a well- knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier while discussing the scheme of Section 4A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one month it is not paid by the employer then as per Section 4A(3)(a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose bread-winner might have either been seriously injured or might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein. It is a statutory elongation of the liability of the employer to make good the principal amount of compensation within permissible time limit during which interest may not run but otherwise liability of paying interest on delayed compensation will ipso facto follows. Even though the Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section 4A(3)(a) still the liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally liable to be discharged by the insured employer. Consequently such imposition of interest on the principal amount would certainly partake the character of the legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not dehors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part f the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under section 4A(3) may start running for the purpose of attracting interest under sub-clause (a) thereof in case where provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then section 4A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such

contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of Section 4A(3)(a) of the Compensation Act. But similar consequence will not follow in case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by Section 4A(3)(b) of the Compensation Act after issuing show cause notice to the employer concerned who will have reasonable opportunity to show cause why on account of some justification on his part for the delay n payment of the compensation amount he is not liable for this penalty. However if ultimately the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the delay, then the penalty would get imposed on him. That would add a further sum upto 50% on the principal amount by way of penalty to be made good by the defaulting employer. So far as this penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Workmen's Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term 'liability incurred' by the insured employer as contemplated by the proviso to Section 147(1)(b) of the Motor Vehicle Act as well as by the terms of the Insurance Policy found in provisos (b) and (c) to sub-section (1) of section II thereof. On the aforesaid interpretation of these tow statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner Section 3 and 4A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contigencies contemplated by Section 4A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner.

Consideration of the judgments of the High Courts It is now time for us to have a look at the judgments of the different High Courts which have reflected different viewpoints on this question. We shall first deal with those judgements of the high Courts wherein a view is taken that the insurance company would be fully exonerated from the obligation to meet the claims for interest and the penalty amounts imposed on the insured employer as per Section 4A(3)(a) and (b) of the Compensation Act. For taking the aforesaid view in the impugned judgments the High Court of Himachal Pradesh has strongly relied upon two decision Karnataka High Court and the Gujarat High Court. We will, therefore, in the first instance deal with these judgments.

In the case of Oriental Insurance Co. Ltd. v. Raju & Ors. (supra) a Bench of two learned Judges of the Karnakata High Court on the express terms of the Insurance Policy in that case took the view that the Policy did not extend to indemnify the insured in respect of any interest and/or penalty which may be imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act. There was an express exclusion clause qua this liability under the

Insurance Policy and consequently the Karnataka High Court rightly came to the conclusion on the facts of that case that liability arising under Section 4A(3) of the Compensation Act to pay interest on the principal amount as imposed on the insured was not required to be met by the insurance company. Said judgment proceeds on its own facts. it is of no real assistance of resolving the present controversy. The second judgment relied upon by the Himachal Pradesh High Court is rendered by a learned Single Judge of the High Court of Gujarat in the case of Jayantialal & Co. (supra). It has laid down that penalty under Section 4A(3) of the Workmen's Compensation Act is imposed on the owner of the offending truck for remaining indifferent to his statutory liability to make payment in time. Such a liability arising out of personal fault of the insured employer is not required to be met by the insurance company. The aforesaid view of the learned Single Judge of the Gujarat High Court is in consonance with the scheme of the Compensation Act as well as the Motor Vehicles Act as discussed by us earlier. Therefore, in our view, it lays down the correct legal position so far as the penalty claims are concerned. However in so far as the aforesaid decision takes the view that the insurance company would not be liable even to meet the claim of interest at the rate of 6% per annum on the amount of compensation as imposed upon the insured employer under Section 4A(3) of the Compensation Act, the same is not borne out from the scheme of the aforesaid two Acts and to that extent the said decision has to be overruled. We may in this connection refer to a latter Division Bench judgment of the Gujarat High Court in the case of Radhabehn (supra) wherein the Division Bench of the High Court has taken the view that when penalty is imposed on the employer under Section 4A(3) it is on account of the default and negligence of the employer for which he is personally reasonable and the legislature would never be said to have intended that there should be a compulsory insurance covering the liability of an employer of payment of penalty. So far as the interest in concerned the Division Bench took the view that such liability was a natural corollary of the liability to make payment of Compensation and, therefore, it would be covered by the scheme of statutory coverage and consequently the insurance company would be required to make good that claim and reimburse the amount of liability to that extent imposed on the insured employer. The aforesaid extent imposed on the insured employer. The aforesaid decision of the Gujarat High Court has impliedly overruled the contrary view expressed by the impliedly overruled the contrary view expressed by the learned Single Judge of that Court in Jayantilal & Co. (supra) so far as the liability of the insurance company to meet the interest claim is concerned. In the schemes of the Compensation Act and the Motor Vehicles Act as discussed by us earlier the conclusion to which the Division Bench of the High Court of Gujarat reached in Radhabehn's case (supra) is the correct conclusion. The said decision of the Division Bench rightly takes the middle course and answers the correct conclusion. The said decision of the Division Bench rightly takes the middle course and answers the question for consideration partly in favour of the insurance company so far as the penalty claims are concerned and partly against the insurance company so far as the claims for interest are concerned.

We may now refer to another Division Bench judgment of the Gujarat High Court in the case of Gautam Transport, Bhavnagar (supra) wherein it is held that the insurance company would not be liable to meet the claim arising out of penalty imposed on the insured employer under Section 4A(3) of the Compensation Act as the penalty arose on account of clear violation of statutory provisions of the Compensation Act by the employer and that could never be said to have been contemplated by the insurance company while offering contractual coverage as the said penalty would be the result of

the negligence on the part of the insured. In our view, the said decision is in consonance with the schemes of the Compensation Act and the Motor Vehicles Act as discussed by us earlier. W may in this connection refer to a decision of the High Court of Delhi in the case of Oriental Insurance Co. Ltd. v. Hasmat Khatoon & Ors. (supra). A learned Single Judge of the Delhi High Court on the schemes of the Workmen's Compensation Act and the Motor Vehicles act has taken the view that the liability covered by the statutory coverage of insurance is to make good the claim for compensation and that liability would not include interest and penalty. in our view, the said decision lays down the correct legal position so far as award of penalty against the insured employer is concerned. But in so far as it holds that even for the claim of interest on the principal amount of compensation, as imposed on the insured, the insurance company would not remain liable, it has to be overruled.

We may now refer to the other set of judgments, on which reliance was placed learned counsel for the appellants. In the case of Oriental Fire and General Ins. Co. Ltd. v. Nani Bala & Amt. (supra) a learned Single Judge B.L.Hansaria, J. (as he then was) speaking for the High Court of Judicature at Gauhati had to consider the question whether any liability could be imposed upon the insurer of the offending vehicle which had caused accidental injury o the employees of the insured employer. It was decided in the said case on a conjoint operation of the Motor Vehicles Act and the Compensation Act that the provisions o the Compensation act cannot be viewed in isolation when the Motor Vehicles Act has specifically stated that a policy of insurance cannot exclude the liability arising under the Compensation Act and that the expression 'any person' has to cover an insurer also. The aforesaid decision was rendered entirely in a different context and was not concerned with the question whether the insurance company would be liable to meet the claim of penalty amount and interest as awarded under Section 4A(3) of the Compensation Act against the insured employer. It is, therefore, of no assistance in the present cases. However the same learned Judge speaking on behalf of a Division Bench of the Orissa High Court in the case of Khirod Nayak v. Commissioner for Workmen's Compensation & ors. (supra) has taken the view that when any penalty is imposed on the insured employer under Section 4A(3) of the Compensation Act along with interest the insurance company would be liable to make good the entire claim. In the light of the scheme of both the relevant Acts as discussed by us earlier it has to be held that the aforesaid view of the Division Bench of the Orissa High Court in so far as it holds that the insurance company would be liable to meet the claim of penalty to the tune of 50% of the amount of compensation as imposed on the insured employer is not correct. But so far as it is held that the insurance company would be liable to meet the claim of interest at the rate of 6% per annum as granted under Section 4A(3) of the Compensation Act, the same is justified on the scheme of the Act. Aforesaid decision of the Orissa High Court has to be partly overruled to the aforesaid extent. We may now turn to a decision of the Madhya Pradesh High Court in the case of New India Assurance Co. Ltd. v. Guddi & Ors. (supra). A learned Single Judge in the said case took the view that on the scheme of Section 4A(3) of the Compensation Act the insurance company will have to make good the claim of interest and penalty as imposed upon the insured employer. In the light of what we have discussed earlier it must be held that the said view is partly correct in so far as it is held that the insurance company would be liable to pay the amount of interest imposed upon the insured employer by the Workmen's Commissioner under Section 4A(3). But to the extent it seeks to cover even the penalty amount and makes obligatory on the insurer to meet the said claim of penalty imposed upon the insured employer it must be held that the same is not correct and is not borne out from the scheme of the Acts discussed

by us. To that extent the said decision of the learned Single Judge would stand partly overruled. In the case of United India Insurance Co. Ltd. v. Roop Kanwar & ors. (supra) a learned Single Judge of the Rajasthan High Court had to consider a situation where on payment of additional premium the insurance company had agreed in the light of endorsement no.16 of the Policy to cover all liabilities incurred by the insured under Workmen's Compensation Act. In view of this contractual coverage of liability the insurance company in that case was held liable to meet the claim of penalty and interest as imposed upon the insured under Section 4A(3) of the Compensation Act. This judgment proceeded on its own facts and was concerned with a situation converse to the one as was examined by the Karnataka High Court in Oriental Insurance Co. Ltd. v. Raju & Ors. (supra). In the case decided by the Karnataka High Court, as seen earlier, there was an express exclusion of such liability of the insurance company. In the aforesaid case decided by the Rajasthan High Court there was an expression inclusion of such liability for the insurance company which had taken additional premium. This judgment also, therefore, is of no assistance to either side.

As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section Act on the conjoint operation of Section 3 and Section 4A sub-additional amount of compensation y way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4(3)

(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.

In view of the aforesaid conclusion of ours the present appeals will have to be partly allowed, The impugned judgments of the High Court will stand confirmed to the extent they exonerate the respondent-insurance companies of the liability to pay the penalty imposed on the insured employers by the Workmen's Commissioner under Section 4A(3) of the Compensation Act. But the impugned judgments will be set aside to the extent to which they seek to exonerate insurance companies for meeting the claims of interest awarded on the principal compensation amounts by the Workmen's Commissioner on account of default o the insured in paying up the compensation amount within the period contemplated by Section 4A(3) of the Compensation Act. Accordingly it must be held that the respondent insurance company will be liable to meet the claim of the appellant- insured in Appeals Nos. 15698-15699 of 1996 to the extent of Rs. 88,548/- in Claim Case No.2 of 1992 with interest thereon at the rate of 6% per annum of from the date of accident till the date of payment. But the redpondent- insurance company will not be liable to meet the claim of penalty of Rs.44,274/- imposed on the appellant-insured along with the interest of 6% per annum on the said amount of Rs. 44,274/-. To that extent the award of the Commissioner will stand modified. So far as the Claim No.3 of 1992 is concerned the respondent-insurance company will be liable to reimburse the compensation amount of Rs. 88,968/- with interest at the rate of 6% p.a. thereon from the date of the accident till the date of payment. But it will stand exonerated of its liability of reimbursement so far as the penalty amount of Rs.41,984/- and amount of interest at 6% p.a. thereon are concerned. To that extent the award of the Workmen's Commissioner in Claim Case

No.3 of 1992 will stand modified. Similarly in Civil Appeal No. 15700 of 1996 the impugned judgment of the High Court will stand partly set aside s far as the claim for interest as imposed on appellant-insured is concerned and the award of the Workmen's Commissioner in so far as his award of Rs. 81,540/- as compensation along with interest will stand confirmed. But the further part of the award to the extent it directs that in the event of failure to pay the said amount within one month a penalty of 30% p.a. shall be payable by the insurance company, will stand set aside. Consequently the respondent-insurance company in this case will be liable to pay Rs.81,540/- by way of compensation with interest at 6% per annum thereon from the date of the accident till the date of payment to the claimants. The awards of the Commissioner will stand modified accordingly. They will obviously remain untouched so far as they are against the employers. It will be open to the claimants to enforce their claims of penalty amounts with proportionate interest thereon against employers concerned.

In the result all these three appeals are partly allowed as aforesaid. In the facts and circumstances of these cases there will be no order as to costs.