M/S New India Assurance Co Ltd vs Mohammad Arif & Anr. on 3 April, 2025

Author: Dharmesh Sharma

Bench: Dharmesh Sharma

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Judgment reserved on: 01 April 2025
Judgment pronounced on: 03 April 2025
\+ FAO 158/2021, CM APPL. 20234/2021 and CM APPL. 20235/2021

M/S NEW INDIA ASSURANCE CO LTD .....Appellant
Through: Ms. Veera Mathai and Mr. Gaurav Nair, Adv.
versus

MOHAMMAD ARIF & ANR. .....Respondents
Through: Mr. R.K. Nain, Ms. Pratima N. Lakra and Mr. Chandan Prajapati, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA
JUDGMENT

1. The appellant/insurance company has preferred the present appeal under Section 30 of the Employee's Compensation Act, 19231, assailing the impugned judgment dated 26.04.2021 passed by the Commissioner, Employee's Compensation Act, 1923, whereby the claim filed by the respondent No.1/injured employee under Section 22 of the E.C. Act has been allowed and he has been granted total compensation of Rs. 5,16,672/- payable alongwith interest @ 12% p.a. with effect from 29.07.2015 till realization, besides penalty in terms of Section 4A(3)(b) of the E.C. Act amounting to Rs. 2,58,336/-.

1 E.C. Act KUMAR VATS Signing Date:04.04.2025 15:04:40

2. The grievance of the appellant/insurance company is that the liability to pay compensation including penalty has been fastened upon it contrary to the law.

FACTUAL BACKGROUND:

3. Briefly stated, it was proven during the course of enquiry before learned Commissioner, Employee's Compensation that respondent No.1/injured was employed as a driver by respondent No.2/registered owner and on the fateful day i.e. 29.06.2015 he was driving a truck bearing No. HR-55P-6453 (12 tyre) when at about 02:00 AM, it met with an accident about 2-3 Kms from Pana

Garh falling in the District Paschim Bardhaman, State of West Bengal. Respondent No.1/injured employee was proven to have suffered grievous injuries resulting in permanent partial disability to the extent of 22% in the nature of physical impairment of his abdomen and lower jaw besides left knee. It was claimed during the enquiry that the earning capacity of the respondent No.1/injured employee had been substantially reduced.

4. The learned Commissioner, Employee's Compensation, assuming the monthly wages of the respondent No.1/injured employee @ Rs. 8,000/- per month, reckoned 60% of the same for the purpose of considering compensation and further loss of earning capacity was computed at 50%, and accordingly, the compensation was calculated as under:-

i)	Relevant factor of 26 years	:	215.28
ii)	60% of wages @ Rs. 8000/- pm	:	Rs. 4800/-
iii)	Amount of compensation 215.28 X 4800 X 50	:	Rs. 5,16,672/-

5. Although, it is an admitted fact that the ill-fated truck was insured by a policy of insurance dated 04.01.2015 till 03.01.2016 with the appellant/insurance company, however, in the present appeal, the appellant has assailed the impugned judgment primarily on the grounds that the claim filed by the respondent No.1/injured employee was barred by limitation for having been filed more than two years after the date of accident, contrary to Section 10(1) of the E.C. Act; and that no intimation with regard to the alleged disability suffered by respondent No.1 was given by the respondent No.2/registered owner/employer in terms of Section 10B of the E.C. Act; and lastly that no liability could have been imposed by the appellant/insurance company to pay the penalty in terms of Section 4A(3)(b) of the E.C. Act.

6. Learned counsel for the appellant/insurance company in her submissions relied on the decisions in Ved Prakash Garg v. Premi Devi & Ors2; L.R. Ferro Alloys Ltd. v. Mahavir Mahto & Anr.3; New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya & Anr. 4; Pratap Narain Singh Deo v. Srinivas Sabata & Anr. 5; Urmila Rani v. Manjit Kaur6; Mohd. Adbullah v. Manager, Trumboo Cement Industry Ltd. and Ors.7 2 (1997) 8 SCC 1 3 (2002) 9 SCC 450 4 (2006) 5 SCC 192 5 1976 SCC (1) 289 6 2014 SCC Online Del 1217 7 Manu/JK/0675/2023 KUMAR VATS Signing Date:04.04.2025 15:04:40

7. Per contra, learned counsel for respondent No.1/injured employee relied on the decisions in National Insurance Co. Ltd. v. Mastan And Another8 and Kamlesh and Ors. v. Gian Chand and Ors.9. ANALYSIS AND DECISION:

8. Having given my thoughtful consideration to the submissions advanced by learned counsel for the parties and on perusal of the record, I find that the present appeal is bereft of any merits. THE ISSUE OF LIMITATION

9. First thing first, it would be apposite to refer to Section 10 of E.C. Act, which provides as follows: -

> S.10. Notice and Claim. -(1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death:
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> ..... Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim-
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> (a) if the claim is preferred in respect of the death of a [an employee] resulting from an accident which occurred on the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or
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> (b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed] had knowledge of the accident from any other source at or about the time when it occurred:
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> Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that 8 (2006) 2 SCC 641 9 2015 SCC OnLine P&H 9131 KUMAR VATS Signing Date:04.04.2025 15:04:40 the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.
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> 10. A careful perusal of the aforesaid provisions would show that ordinarily a claim for compensation has to be preferred within two years of the occurrence of the accident. However, in terms of the fifth and last proviso to Section 10 of the EC Act which has been reproduced hereinabove, the Commissioner can still entertain and decide any claim to compensation on there being advanced any sufficient cause by the claimant.
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> 11. In the instant case, upon a perusal of the record, it appears that initially the only objection taken by the appellant/insurance company which prevailed upon the learned Commissioner was with regard to territorial jurisdiction for filing the present

claim. Learned Commissioner, Employee's Compensation vide order dated 27.09.2017 dismissed the claim petition on the ground of lack of territorial jurisdiction because the offending vehicle was registered in Gurgaon, the claimant was ordinarily a resident of Uttar Pradesh besides the fact that the accident occurred in West Bengal.

12. However, on an appeal being filed by the respondent No.1/injured employee bearing FAO No. 127/2018 titled "Mohammad Arif v. M/s. The New India Assurance Company Ltd. & Anr.", vide order dated 28.05.2018, the said decision was set-aside by this Court, while relying upon its decision in the case of "Abdul Gaffur @ AGR. Gafur & Anr. v.

Sachit Bhagat" in FAO No. 128/2018 dated 08.05.2018, and the matter KUMAR VATS Signing Date:04.04.2025 15:04:40 was remanded back to the learned Commissioner to decide the claim petition on merits.

13. Thus, the issue that the claim was time barred was not taken. Of course, the issue of limitation goes to the root of the matter, but at the same time, having regard to the fact that respondent No.1/injured employee was under prolonged medical treatment and was discharged from the Anurag Healthcare Pvt. Ltd., Kanpur hospital on 31.07.2015, and then re-admitted on 30.09.2015 wherein he remained upto 12.10.2015 and eventually was granted permanent disability certificate dated 12.07.2017 from the Aruna Asaf Alit Hospital, Delhi, it must be assumed that the delay in filing the claim petition stood condoned. The cited case titled Shantabhai Ananda Jagtap & Anr. v. Jayram Ganpati Jagtap & Anr. 10 has no bearing in the present case since in the said case, there was a delay of nine years in filing the claim petition after the claimants were unsuccessful in seeking compensation before the Motor Accidents Claims Tribunal.

INTIMATION OF ACCIDENT UNDER SECTION 10B OF THE EC ACT

14. The objection raised by the learned counsel for the appellant/insurance company as regards non-intimation of accident resulting in serious bodily injuries to the respondent No.1, also does not cut any ice either since on perusal of the pleadings i.e., written statement of the employer, it is borne out that the information regarding the accident was given immediately to the appellant/insurance company, so much so that even the compensation towards own damage to the insured 10 (2023) 8 SCC 171 KUMAR VATS Signing Date:04.04.2025 15:04:40 truck was awarded by the appellant/insurance company. In the written statement filed by the appellant/insurance company during the enquiry before the learned Commissioner, Employee's Compensation, there was no averment that no information was given to the accident by the registered owner/insured. No witness was examined on behalf of the appellant/insurance company to prove that such information was not given or registered with them at the earliest opportunity upon the occurrence the accident.

IMPOSITION OF PENALTY

15. Insofar as the issue of imposition of penalty is concerned, evidently the respondent No.1/injured employee was not paid any interim compensation within the requisite time period. At the cost of repetition, it has been the consistent case of the respondent No.2/registered owner/insured that the information regarding the accident had duly been given to the appellant/insurance company. If that were the case, the insurance company which engages a team of inspectors and surveyors could have easily ascertained that the respondent No.1/employee had been injured in the accident and they could have initiated measures to award a tentative compensation to the respondent no.1/injured employee based on their own estimates. Evidently, the said measures were not taken by the appellant/insurance company.

16. Much reliance has been placed on decision in Ved Prakash Garg v. Premi Devi (supra), wherein the Supreme Court examined an issue to as to "where an employee receives a personal injury in a motor accident arising out of and in the course of his employment while working on the motor vehicle of the employer, whether the insurance company, which KUMAR VATS Signing Date:04.04.2025 15:04:40 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 4-A(3) of the Compensation Act".

17. The Supreme Court held that the insurance company concerned shall 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. It was further held that the compensation to be paid shall not only be the principal amount but also the interest payable for the delayed period. It would be apposite to refer to the observations made by the Supreme Court while answering the aforesaid question, which go as under:

> "14. ..... 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 of 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 4-A(3) may start running for the purpose of attracting interest under sub-clause
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> (a) thereof in case where provisional payment has to be made by the insured employer as per Section 4-A(2) of the Compensation Act from the date such

> provisional payment becomes due. But KUMAR VATS Signing Date:04.04.2025 15:04:40 when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then Section 4-A(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 4-A(3)(a) of the Compensation Act...."

18. However, the same was held to be not true in the case of section 4A(3)(b), as it was held as under:

> ".....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 4-A(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 in 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 up to 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 Vehicles 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 two 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 KUMAR VATS Signing Date:04.04.2025 15:04:40 interest thereon, if any, as imposed by the Commissioner, Sections 3 and 4-A(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 contingencies contemplated by Section 4-A(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."

19. Thus, it is well settled that where there is default on the part of the insured in not making timely payment of interim compensation to the workman/employee, the liability to pay compensation under section 4A(3)(b) of the EC Act cannot be fastened upon the shoulders of the insurance company. At the same time, the Supreme Court in the cited case of Ved Prakash Garg v. Premi Devi (supra), cited with approval the decision of the Rajasthan High Court in a case titled as United India Insurance Company Ltd. v. Roop Kanwar And Ors.11, wherein it was held that if an additional premium has been paid by the employer/insurer to cover compensation under the Workmen's Compensation Act, 1923, the liability to pay the penalty under Section 4A(3)(b) of the Act shall also be borne by the insurer.

20. In the instant matter, a bare perusal of the policy of insurance dated 04.01.2015 would show that apart from basic third-party insurance amount of Rs. 16,621/-, an O.D. premium of Rs. 7,435/- and additional premium was paid for insurance covering- Fire Peril Premium Rate, Burglary Peril Premium Rate, Riot Strike Peril Premium Rate, 11 2006(2) TAC 973 KUMAR VATS Signing Date:04.04.2025 15:04:40 Earthquake Peril Premium Rate, Flood Storm Peril Premium Rate, Accidental Peril Premium Rate, Malicious Peril Premium Rate, Terrorist Peril Premium Rate, Transit Peril Premium Rate, Landslide Peril Premium Rate. It further shows that an Additional Premium towards legal liability to driver, conductor, cleaner employed for operation in the sum of Rs. 150/- was paid. That being the case, the appellant/insurance company cannot escape from its financial liability to pay compensation including penalty amount.

20. Insofar as the decision in L.R. Ferro Alloys Ltd. v. Mahavir Mahto (supra) is concerned, it was a case where there was no issue of payment of additional premium covering liability under the Workmen's Compensation Act, and therefore, it was held that the insurance company was not liable to pay the penalty amount under Section 4A(3)(B) of the E.C. Act. The decision in Pratap Narain Singh Deo v. Srinivas Sabata (supra) only propounded the law as to the legal duty of the employer under Section 4A(1) of the E.C. Act to pay compensation at the rate provided by Section 4, as soon as injuries are caused to his employee. The decision was not in relation to liability fastened upon the insurance company with respect to payment of penalty under Section 4A(3)(b) of the E.C. Act.

21. The decision in Urmila Rani v. Manjit Kaur (supra) by a Coordinate Bench of this Court does not help the cause of the appellant/insurance company either because while interpreting Section 4A(3) of the E.C. Act, it was held that the insurance company is not liable to pay interest payable on the compensation under Section 4A(3) of the E.C. Act. However, it was held that the insurance company would be liable, if it is shown that there was a comprehensive insurance policy KUMAR VATS Signing Date:04.04.2025 15:04:40 which would also make the insurance company liable to pay compensation and interest amount, besides fastening the liability to pay compensation towards the penalty.

22. The decision in Mohd. Adbullah v. Manager, Trumboo Cement Industry Ltd. (supra) again does not help the appellant because it was held that unless there is a specific contract of insurance between the employer and insurer, the insurer is not liable to indemnify the insured for any liability

to pay amount of interest as well as penalty.

23. At the cost of repetition, in the instant case where additional premium was paid, and furthermore there is nothing to discern that the appellant/insurance company absolved itself from payment of any liability or restricted such liability under the EC Act, the liability to pay penalty would have to be borne by the insurer.

24. In view of the above, the present appeal is dismissed. All pending applications are also disposed of.

DHARMESH SHARMA, J.

April 03, 2025 sp KUMAR VATS Signing Date:04.04.2025 15:04:40