

CASE NO.:
Appeal (civil) 2333 of 2006

PETITIONER:
New India Assurance Co. Ltd.

RESPONDENT:
Harshadbhai Amrutbhai Modhiya & Anr.

DATE OF JUDGMENT: 28/04/2006

BENCH:
S.B. Sinha

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (Civil) no.20126 of 2005]

S.B. SINHA, J :

Leave granted.

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.

Before advertng 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:

- (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 Others [(1997) 8 SCC1] and L.R. Ferro Alloys Ltd. v. Mahavir Mahto and Another [(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 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:

"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."

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:

"Contracting out.\027Any 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."

By reason of the provisions of the Act, an employer is not statutorily

liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer, the insurer shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor Vehicles Act does not have a statutory liability. Section 17 of the Act does not provide for any restriction in the matter of contracting out by the employer vis-à-vis the insurer.

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

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:

"\005A 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. 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 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."

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 \026 employer for default of payment of amount stating:

"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.

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.