

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:
P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
(ARISING OUT OF .S.L.P) NO.20126 OF 2005)

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 vs. Bremer ([1976] Q.B. 44). This view was approved by Lord Wilberforce in Reardon Smith vs. Hanson-Tangen (1976 [1 WLR] 989, wherein he said "it is desirable that the same 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 Colivaux'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.