



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

C.M.A. No.991 of 2007

Between:

United Indian Insurance Company Limited

.... Appellant

And

Muneddu Dhanalakshmi and 3 others.

....Respondents.

Date of Order pronounced on : 28.02.2023

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the : Yes/No
fair copy of the Judgment?

VENKATA JYOTHIRMAI PRATAPA, J



***HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

+ C.M.A No.991 of 2007

% 28.02.2023

United India Insurance Company Limited

.... Appellant

And

Muneddu Dhanalakshmi and three others.

....Respondents.

! Counsel for the Petitioner :

Sri N. Ramakrishna.

Counsel for the Respondents:

T. Lakshmi Narayana

<Gist :

>Head Note:

? Cases referred:

1) 1997 (8) SC 412

2) 2022 Live Law (SC) 102

3) 2000 SCC (L & S) 1105

4) (2007) 2 SCC 743

**HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA****C.M.A.No.991 of 2007****JUDGMENT:-**

This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923 (in short 'the Act') against the impugned final notice dated 22.10.2007 issued in W.C.No.11 of 1992 on the file of the Commissioner for Workmen's Compensation (DCL), Guntur.

Parties before the learned Commissioner:

2. The appellant herein was the Opposite Party No.2/Insurance Company, the respondents Nos. 1 to 3 herein were the applicants and the respondent No.4 herein was the Opposite Party No.1/owner of the offending vehicle before the learned Commissioner. For the sake of convenience and understanding, the parties are referred to as they were arrayed before the learned Commissioner.

3. Case of the Applicants

Applicants are the wife, son and daughter of the deceased Venkata Reddy, who died in the course of employment on



28.02.1980 while working as cleaner on the oil tanker bearing No. AP 7U 0369 of Mr. KasiViswanadham (O.P.No.1). Against their claim of Rs.60,734.80/-, the learned Commissioner granted Rs.43,469/- and directed Opposite Parties to deposit the amount within 30 days vide Order dated 15.09.1995.

4. Events post award:

- i.** Opposite Party No.2 deposited Rs.39,000/- leaving balance of Rs.4469/-.
- ii.** Learned Commissioner vide Order dated 06.11.1996 directed Opposite Party No.2 to deposit Rs.4,469/- and interest at 12% p.a., from the date of accident i.e., Rs.34,286/- and an amount of Rs.21,700/- and 50% penalty totalling Rs.60,455/- by way of Demand Draft rejecting the plea of O.P.No.2.
- iii.** O.P.No.2 deposited Rs.4,469/- only.
- iv.** O.P.No.2 filed O.S.No.1310 of 1998 on the file of II Addl. Junior Civil Judge, Guntur, seeking declaration that the order dated 06.11.1996 is illegal, which was dismissed.
- v.** Appeal preferred with delay petition, it was dismissed.
- vi.** O.P.No.2 deposited Rs.34,286/- on 28.03.2002 vide cheque.
- vii.** Thereafter, on 06.10.2005, the learned Commissioner issued Notice to O.P.No.2 to deposit Rs.59,679/- by way of D.D. and also final Notice dated 02.02.2006 to deposit the amount within seven days.
- viii.** On the Memo filed by the claimants, the Learned Commissioner issued notice dated 22.10.2007 directing O.P.No.2 to deposit the amount, which is impugned in this Appeal.



5. Grounds of Appeal:

The impugned final Notice issued by the learned Commissioner was challenged by the Insurance Company on the ground that the learned Commissioner ought not to have fastened liability on the insurance company for the payment of interest and penalty.

6. Arguments advanced at the Bar:

Learned counsel for the appellants would submit that interest and penalty cannot be fastened against the insurance company. Refuting the same, the learned counsel for the respondents submits that the liability of insurance company being indemnity they are liable to pay interest as well as Penalty since the liability is joint and several. While making submissions, the learned counsel for the appellant would represent that they have already deposited the amount and hence, there may be a direction to the learned Commissioner for making proper calculation if any excess is paid, it has to be returned to the Appellant.

7. The substantial question of law framed by the appellant are extracted infra:



- (a) *Whether Dy. Commissioner can impose penalty and interest on Insurance Company under Section 4-A (3) of Workmen Compensation Act, 1923?*
- (b) *Whether Dy. Commissioner ordered to pay the interest on penalty amount only on to the insurance company?*
- (c) *Whether Dy. Commissioner can pass final notice only on the Insurance Company to pay an amount of Rs.72,438/- when Insurance Company filed a Counter in which it is specifically mentioned that Insurance Company has paid all together Rs.77,755/- on different dates inclusion of penalty and interest?*
- (d) *Whether Dy. Commissioner can pass final notice when it is brought its notice that Insurance Company is not liable for penalty and interest as per the various judgments of Apex Court?*

8. The substantial questions of law referred supra are intertwined and the sole question revolving around all the questions is whether the liability to pay interest and penalty can be fastened against the insurance company under the Act. This question is no more *res integra* in the light of the judgments of the Hon'ble Apex Court. In ***Ved Prakash Garg etc., v Premi Devi and others***¹, it was observed that a well-knit scheme was

¹ 1997 (8) SC 412



intended by the legislature in computing liabilities and that once the compensation falls due after the period fixed, interest is automatic, whereas that it is not a penalty. Interest as such was held to be 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 follow, the Hon'ble Apex Court held as follows:

"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 of the insured in paying up the compensation amount within the period contemplated by Section 4A(3) of the Compensation Act."

9. In ***Ajaya Kumar Das and another v Divisional Manager and Another***², the Hon'ble Apex Court observed that Section 4-A of the Workmen's Compensation Act, 1923 stipulates that the

² 2022 Live Law (SC) 102



Commissioner shall direct the employer to pay interest of 12% or at a higher rate, not exceeding the lending rates of any scheduled banks specified, if the employer does not pay the compensation within one month from the date of it fell due.

10. In *Kashibhai Rambhai Patel v Shanabhai Somabhai Parmar and others*³, the Hon'ble Apex Court observed that the Insurance Company would not be liable for the amount of penalty, but insofar as the interest is concerned, all the appellants as also the Insurance Company would be liable. The amount of penalty would be recoverable from the appellants together with the amount of compensation if not already paid by the insurance Company.

11. In the backdrop of the legal position referred above, the insurance company is liable to pay the interest, the claimant is entitled to have interest at 12% from the date of accident till the realization. Coming to the point of penalty, insurance company is not liable to pay the penalty under the Act.

12. Coming to the present appeal, this is an appeal preferred against final Notice dated 22.10.2007. At first, it has to be seen whether the Notice impugned is appealable or not in the context.

³ 2000 SCC (L & S) 1105



13. It is relevant to refer to Section 30 of the Workmen's Compensation Act, 1923, which reads as under:

" 30. Appeals.-

- (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:
 - (a) an order awarding as compensation a lump sum whether by way of redemption of a half- monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
 - [(aa) an order awarding interest or penalty Under Section 4A;]
 - (b) an order refusing to allow redemption of a half-monthly payment;
 - (c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;
 - (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or
 - (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that **no appeal shall lie against any order unless a substantial question of law is involved in the appeal** and in the case of an order other than an order such as is referred to in Clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees

...."



14. A perusal of Section 30 of the Workmen's Compensation Act referred above makes it clear that the scope of Section 30 of the Act for entertaining the appeal against the order passed by the Commissioner is very limited and is restricted to those that are provided in the clauses (a) to (e). Vide Section 30 (1) (aa), an **Order** awarding interest and penalty under Section 4-A is appealable. Impugned notice per se would not come under order awarding interest and penalty as it is only a demand notice. As seen from 'Grounds of Appeal', nowhere the Appellant challenged the Order dated 06.11.1996 awarding interest and penalty.

15. It appears the Appellant questioned the validity of the Order dated 06.11.1996 (awarding interest and penalty) before the Civil Court, which was dismissed. Thereafter, he preferred appeal before the District Court by filing a petition to condone the delay, which was dismissed. Be that as it may, the recourse left to the aggrieved against the Order dated 06.11.1996 is by filing Civil Miscellaneous Appeal before the High Court as per Section 30 of the Act.

16. In Webster's Encyclopaedic Unabridged Dictionary of English Language, the word namely is defined as "that is to say, explicitly, specifically to wit an item of legislation, namely certain bill". The use of word "namely" followed by a specific list is usually an



indication of exhaustiveness, vide ***State of Karnataka v. Balaji Computers***⁴. The language employed in Section 30 of the Act is vivid to construe that certain type of orders which are mentioned therein are categorized as appealable orders under the Act. The notice impugned herein is not falling under any category of Orders mentioned in Section 30 of the Act. It is pertinent to say that it is an exhaustive provision leaving no scope to include any other order beyond. In the light of the aforesaid discussion, appeal is liable to be dismissed since not maintainable.

17. In result, in circumstances of the case, the Appeal is dismissed. Both parties shall bear their own costs.

Miscellaneous petitions pending, if any, in this case shall stand closed.

VENKATA JYOTHIRMAI PRATAPA, J

Date : 28.02.2023

eha

⁴ (2007) 2 SCC 743.



HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

C.M.A.No.991 of 2007

Date :28.02.2023

eha