

HIGH COURT OF GUJARAT

UNITED INDIA INSURANCE CO LTD

Versus

APANNA GURULENGAPPA HARKULE MANTHALE & 12

Date of Decision: 14 March 2017

Citation: 2017 LawSuit(Guj) 193

Hon'ble Judges: [S G Shah](#)

Case Type: First Appeal

Case No: 753 of 2001

Subject: Labour and Industrial

Acts Referred:

[Workmens Compensation Act, 1923 Sec 4A\(3\)\(a\), Sec 4A\(3\)\(b\).](#)

Advocates: [Vibhuti Nanavati](#), [R C Jani](#)

Cases Referred in (+): 2

S G Shah, J.

[1] Heard learned advocate Mr. Vibhuti Nanavati for the appellant and learned advocate Mr. R. C. Jani for the respondent No.1. Rest of the respondents, though served, they have remained absent. Perused the record.

[2] The Insurance Company has challenged the judgment and award dated 15.9.2000 by ex-officio Commissioner for the Workmen's Compensation Act and Labour Court in Fatal Case (under Workmen's Companation) No.40 of 1993. By such impugned judgment, the Commissioner has awarded an amount of Rs.92.511/- with 50% penalty on such amount being Rs.46,255/- in favour of the original claimants, which is to be paid by the present appellant - Insurance Company because of the policy of insurance in favour of the employer of the victim, who expired during the course of his service. The Commissioner has also awarded 6% on the principal amount of compensation in favour of the claimants against the appellant.

[3] The appellant - Insurance Company has challenged the award mainly for its liability to pay penalty and interest only because the award of principal amount of

compensation is practically as per the statute where there is little scope to deviate from the calculation to arrive at quantum of compensation that may be payable to the victim or his heirs under the Workmen's Compensation Act.

[4] It may be appropriate to refer the decision of Hon'ble Supreme Court of India in the case of [Ved Prakash Garg Vs. Premi Devi](#), 1997 AIR(SC) 3854 and also the decision in the case of [Kashibhai Rambhai Patel Vs. Shanabhai Somabhai Parmar & Ors.](#), 2000 AIR(SCW) 4932.

[5] In both the above decisions, Hon'ble the Supreme Court of India has categorically confirmed that the Insurance Company is not liable to pay penalty u/ss.4(A)(3)(B) of the Workmen's Compensation Act.

[6] However, the liability in respect of interest could be burdened on the Insurance Company considering the provisions of Section 4(A)(3)(A) of the Act. Since the judgment in Ved Prakash Garg is explaining the legal position in detail and it is holding the field throughout the period, whereby, there is no other view taken by any other Court thereafter, such judgment is to be relied upon without any objection.

[7] In view of such facts and circumstances, the law is well settled whereby the Insurance Company cannot be held liable to make payment of penalty.

[8] The appeal is partly allowed; whereby, the impugned judgment and order is modified only to the effect that the Insurance Company shall not be liable to pay the amount of penalty. However, though the impugned award is modified, when the Insurance Company has already deposited the total amount of compensation as awarded by the Commissioner, it would not be appropriate to restrain the claimant to get the benefit of such amount and thereby, to refund the amount to the appellant - Insurance Company. However, the Insurance Company would be entitled to recover the same from its insured directly by executing this award. For the purpose, the award is modified in following terms.

[9] If the Insurance Company has made the payment of penalty, then such amount can be recovered from the respondent No.6 - employer directly by way of execution proceedings.

[10] In view of the above, the present First Appeal is partly allowed and is disposed of in above terms.