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CMA No. 2846 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	17.03.2026
PRONOUNCED ON :	30.04.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**CMA No. 2846 of 2021
and
C.M.P.No.16370 of 2021**

M/s.National Insurance Co. Ltd.,
Sreeji Complex, Bedford,
Coonor.

..Appellant(s)

Vs

1. Mr. Deepak,
2. M/s.Golden Hills Estate Private Ltd.,
Karumpalam, Nilgiris District.

..Respondent(s)

Prayer: Civil Miscellaneous Appeal filed under Section 30(1) of Employee's Compensation Act, 1923, praying to set aside the order of the Commissioner for Employee's Compensation, Coonoor passed in E.C.No.279 of 2019 dated 05.10.2020.

For Appellant(s): Mr. Nageswaran and Narichania

For Respondent(s): Mr. M.Vijaya Kumar (For R1)
Mr.M.R.Raghavan (For R2)



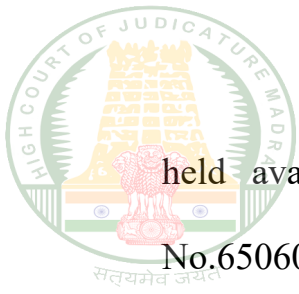
JUDGMENT

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The present Civil Miscellaneous Appeal has been filed challenging the order dated 05.10.2020 passed in W.C.No.279 of 2019 by the Commissioner of Employee's Compensation, Coonoor.

2. The facts leading to the present *lis* are that, on 03.06.2018, the claimant, one Mr. Deepak Sharma, aged about 40 years, who was employed in the 1st respondent's factory, met with an accident in the Rolling Room while feeding the Rotorvane. During the course of such work, his right hand was caught in the feed conveyor, resulting in severe injuries and crushing of his right upper limb. The claimant was immediately admitted to the hospital on 03.06.2018 where his right hand up to the upper limb had to be amputated, and he underwent necessary medical treatment before being discharged on 19.07.2018. As a result of the accident, the claimant suffered permanent disability, losing his right hand and resulting in total loss of earning capacity. Hence, the claimant filed an application in E.C.No.279 of 2019, before the Commissioner for Workmen's Compensation, Coonoor, claiming compensation to the tune of Rs.10,00,000/

3. The factory in which the claimant was employed was arrayed as the 1st respondent, and the Insurance Company with which the 1st respondent had



held availed Employees' Compensation Insurance policy (bearing Policy No.650600411710000002) was impleaded as the second respondent. The 1st respondent, in its counter statement, averred that although the accident had been duly intimated to the second respondent, no compensation was paid to the claimant. It was further contended that, in view of the valid insurance policy, the liability to pay compensation under the Workmen Compensation Act, 1923 rests with the second respondent. On the other hand, the second respondent filed its counter statement contending that the claimant must establish that he was an employee of the 1st respondent and that the accident arose out of and in the course of employment. It was further alleged that the accident occurred due to the negligence of the claimant. The second respondent also contended that the compensation claimed was excessive and, in any event, that it is not liable to pay interest under the terms of the policy.

4. The learned Commissioner for Workmen's Compensation, upon consideration of the pleadings of both parties, framed the following question for determination.:

- 1.) Whether the claimant sustained the injury on 03.06.2018 in the course of his employment? Whether there existed an employer–employee relationship between the claimant and the 1st respondent?



2.) What the quantum of compensation to which the claimant is entitled as per the Workman Compensation Act, 1923?

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5. From the Claimants' side the Claimant himself has been examined as AW1(மசா.1) and had marked documents Ex.A1 to Ex.A4 (மசா. ஆ.1 to மசா. ஆ.4) as evidence, whereas the 1st respondent side had marked documents Ex.R1 to Ex.R4(எ.மா.ஆ.1 to எ.மா.ஆ.4) as respondent side evidence. The 2nd respondent had also marked the Ex.R1(எ.மா.ஆ.1) as evidence.

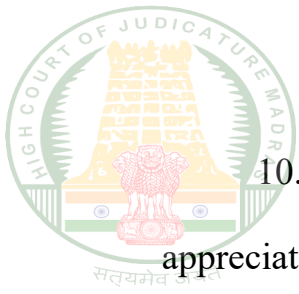
6. The learned Joint Commissioner for Workmen's Compensation, after hearing the arguments on both sides and perusing the materials available on record, proceeded to decide the aforesaid issues. Insofar as Issue No.1 is concerned, the learned Joint Commissioner, upon consideration of the evidence on record, namely Ex.A1 (மசா.ஆ.1), being the medical certificate issued by the doctor to the Insurance Company, which clearly states that the claimant was an employee of the 1st respondent and had sustained injuries on 03.06.2018 and Ex.A2 (மசா.ஆ.2), being the admission and discharge certificate granted by the doctor, held that the claimant was an employee of the 1st respondent and that he sustained injuries in the course of his employment on 03.06.2018



7. Insofar as Issue No.2 is concerned, the learned Commissioner, upon perusing Ex.R1 (ग.मा.अ.1), being the salary certificate of the claimant for the period from 01.06.2018 to 30.06.2018, and upon considering the cross-examination of the claimant by the 1st respondent with regard to his age, held that the monthly income of the claimant was Rs.8,000/- and that he was aged about 44 years at the time of the accident. Accordingly, the learned Joint Commissioner awarded a compensation of Rs.6,62,477/- to the claimant, vide order dated 05.10.2020, payable by the second respondent, together with interest at 12% per annum from the date of accident till the date of deposit. Aggrieved by the aforesaid order, the second respondent has preferred the present Civil Miscellaneous Appeal before this Court, impleading the claimant and the 1st respondent factory as respondents therein.

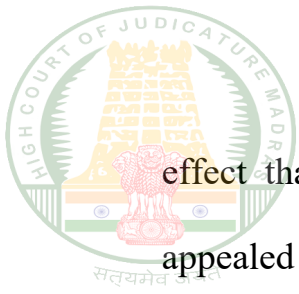
8. Heard Mr.Nageswaran and Mr.Narichania, learned counsels appearing on behalf of the appellant, Mr.M.Vijaya Kumar, learned counsel appearing on behalf of the 1st respondent and Mr.M.R.Raghavan, learned counsel appearing on behalf of the 2nd respondent.

9. The learned counsel for the appellant would submit that even though the appellant had raised grounds with regard to the grant of compensation by also contesting the relationship of employer and employee between the first and second respondent.



10. The learned counsel would contend that the forum failed to properly appreciate the insurance policy along with its terms and conditions, marked as Ex.R1, which, according to the appellant, clearly establishes that the insurer is not liable to pay interest under the policy. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of *New India Assurance Co., Ltd., Vs. Neeru Dabur and others*, reported in *2004 ACJ 452*, it is further contended that the insurer cannot be fastened with liability to pay interest on the compensation amount. In view of the aforesaid submissions, the learned counsel prays that this Court may be pleased to set aside the impugned order and allow the present appeal.

11. Countering his arguments, the learned counsel appearing for the second respondent would contend that the accident which had occurred on 03.06.2026 had been intimated to the appellant immediately under Form-18 and it is only the appellants, who had not honoured its commitment under the insurance policy. Had the appellant disbursed the compensation amount, the question of payment of interest would not have arisen. That apart, he would submit a compensation of a sum of Rs.6,62,477/- together with interest at the rate of 12% p.a. from the date of accident had been made. He would further submit that the appellant had only deposited the compensation amount and had not deposited interest as ordered by the Tribunal to maintain an appeal against the interest alone. It is mandatory that a certificate of the Commissioner to the



effect that the appellant had deposited the amount payable under the order appealed against is annexed along with the appeal. In the present case, he would submit that only a certificate to the amount of compensation had been issued by the Commissioner also include 12% interest from the date of accident, which was also directed to be paid and in that context, he would submit that the appeal itself would have to be struck off as being violative of mandatory provision for deposit of order against which appeal had been filed and in that context he had relied upon by the judgment of the Allahabad High Court in the case of in the case of *New India Assurance Co., Ltd.*, (cited supra)

12. The primordial issue which had been raised as a substantial question of law is only with regard to the grant of interest payable by the appellant/insurance company.

13. An issue as to the maintainability of the appeal for non-payment of the disputed amount, which is supported by a certificate under Section 31 of the Act, had been raised.

14. Admittedly, the certificate had been produced only with regard to the deposit of the claim amount, namely the compensation awarded, and not the interest component as calculated up to the date of filing of the appeal. On that ground itself, the appeal can be rejected as not being maintainable to be heard



by this Court, as a pre-condition deposit had not been complied with. However, considering the fact that the appeal had been admitted by this Court as early as on 05.10.2021 and that two substantial questions of law touching upon the same issue, which have been framed by this Court *supra*, this Court restrains itself from dismissing the appeal on the said ground.

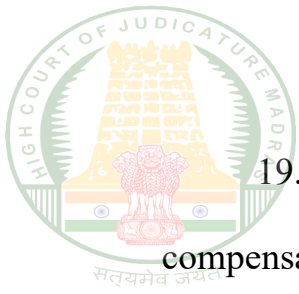
15. An argument had been made by the learned counsel appearing for the appellant that under the contract between the employer, namely the second respondent, there is no contract for payment of interest. He would submit that insurance is a contract of indemnity, indemnifying the insured against any claim made against him, insofar as such claim is covered for indemnification.

16. In the case of *P.J.Narayan Vs. Union of India and others*, reported *in (2006) 5 SCC 200*, the Hon'ble Apex Court, while dealing with a claim to strike off a clause, whereby the insurance company would not be liable to pay interest, had held that there is no statutory liability on the insurance company under the Workmen's Compensation Act and that it is a matter of contract between the insurance company and the insured, and the insurance company can always refuse to insure, having found that it is not supported by statute and the Court had held that the insurance company cannot be forced to take on liabilities which it otherwise do not intend to undertake under the contract.



17. In the case of *L.R.Ferro Alloys Ltd., Vs. Mahavir Mahto and another*, reported in (2002) 9 SCC 450, while dealing with an issue relating to reimbursement of compensation, interest and penalty, the Hon'ble Apex Court had held that the liability to pay interest is part and parcel of the legal liability to pay compensation upon default of payment within one month, and therefore held that the claim for compensation along with interest will have to be made good jointly by the insurance company and the insured employer. However, the payment of penalty imposed on the insured employer being on account of his personal fault, the insurance company cannot be made liable to reimburse the penalty imposed on the employer. Holding so, the Hon'ble Apex Court had held that compensation together with interest is payable by the insurance company.

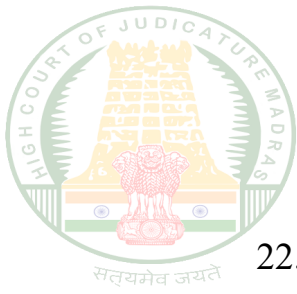
18. The learned counsel for the appellant also placed reliance upon the judgment of the Hon'ble Apex Court in the case of *New India Assurance Co., Ltd., Vs. Harshadbhai Amrutbhai Modhiya & Another*, reported in 2006 (5) SCC 192, to submit that the insurance company was not liable to pay interest. In coming to such a conclusion, the Hon'ble Apex Court had held that insurance is a contract of indemnification and, if under the contract the liability to pay interest had not been undertaken, such liability cannot be mulcted upon the insurance company, as the contract is not a statutory contract as in the case of motor vehicle insurance.



19. Section 4A of the Employees' Compensation Act, 1923 envisages that compensation under Section 4 is to be paid as soon as it falls due, which has been interpreted to by a Larger Bench of the Hon'ble Apex Court in the case of ***Pratap Narain Singh Deo Vs. Srinivas Sabata***, reported in ***(1976) 1 SCC 289*** to mean the date on which the injury had been caused.

20. Subsequent judgments of the Hon'ble Apex Court, interpreting the same from a different date in the case of ***Oriental Insurance Company Limited Vs. Mohd.Nasir and another*** reported in ***2009 (6) SCC 280*** and in the case of ***National Insurance Co., Ltd., Vs. Mubasir Ahmed and another***, reported in ***2007 (2) SCC 349*** had been held to be the judgments by the Hon'ble Apex Court in the case of ***Oriental Insurance Company Limited Vs. Siby George and others***, reported in ***2012 (12) SCC 540***, to be per-incuriam by taking note of the Larger Bench judgment in the case of ***Pratap Narain Singh Deo*** (cited *supra*).

21. Sub-section (3) of Section 4A envisages the consequences of default in paying compensation due under the Act within one month from the date it fell due. Clause (a) of sub-section (3) envisages payment of simple interest at the rate of 12% per annum, and Clause (b) envisages penalty in addition to the interest and penalty.

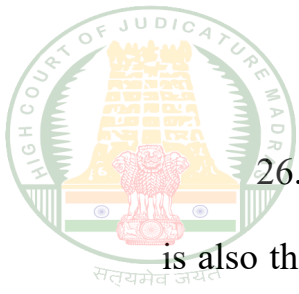


22. In the present case, it is not disputed by the learned counsel for the appellant that the incident had been reported to it within three days, as envisaged in the contract of insurance with the employer. The insurance policy had been marked as Exhibit P1.

23. A reading of Clause 5 of the conditions of the policy mandates that the insurance company should be informed of the incident within 30 days of such occurrence by the employer. Even though the policy of insurance excludes payment of interest, the same can only be taken into account when such notice of the incident had not been given within a period of thirty (30) days.

24. The provisions of the enactment also envisage payment of compensation within one month, which is thirty (30) days by application of the General Clauses Act.

25. Having been given notice of the incident by the employer, namely the second respondent herein, no details have been placed before this Court, nor even before the Commissioner, as to what steps the appellant had taken to make good the compensation payable to the first respondent/employee.



26. The condition prescribed for intimation within thirty (30) days, which is also the period fixed by the statute to pay compensation to the workman, the appellatant insurance company cannot wriggle out of its liability to indemnify the employer by paying the interest component, which is the statutory interest leviabale under sub-section (3) to Section 4A of the Act.

27. In the peculiar facts of these cases, the judgments relied upon by the learned counsel for the appellatant in the case of *New India Assurance Co., Ltd., Vs. Harshadbhai Amrutbhai Modhiya & Another*, reported in *2006 (5) SCC 192* cannot be made applicable, as in the said judgment, the facts leading to fixation or non-fixation of liability on the insurance company had not been discussed, and therefore, the same can only be treated as a judgment confined to its own facts.

28. On the aforesaid findings, I do not find any reason to interfere with the order impugned herein. Accordingly, the appeal fails and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To
The Commissioner for Employee's Compensation,

Coonoor.

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K.KUMARESH BABU, J.

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