

*Before Rajiv Narain Raina, J.*

**NEW INDIA ASSURANCE COMPANY LIMITED** —*Petitioner*

*versus*

**ANITA SHARMA & ANOTHER** —*Respondents*

**FAO No. 458 of 2014**

September 24, 2014

*Employee's Compensation Act, 1932—Ss. 8, 20 & 31 —Motor Vehicles Act, 1988 —S. 166—Revenue Recovery Act, 1890—S.5—Award passed in favour of claimants either on account of injuries sustained and suffered in an accident by victim or from deaths arising out of and in course of employment—Employers or victims had insurance policies with respective insurance companies but were not indemnified where it was established that there was a breach of terms and conditions of policy—Moot point to be answered—whether principle of pay and recover should be extended to Employee's Compensation Act or not. On first principles—It is established beyond doubt that insurance companies cannot be saddled with liability under insurance policies—But if all parameters are satisfied as laid down in Baljit Kaur case they are duty bound to pay amount of compensation to claimants in first instance and then seek to recover amount from insured with whom victims were employed on 'pay and recover' principle.*

*Held*, that the answer seems quite apparently leaning in favour of the insurance companies in appeal in cases where it is established beyond doubt that they cannot be saddled with liability under the insurance policies but were duty bound to pay the amount of compensation to the claimants in the first instance and then seek to recover the amount from the insured with whom the victims were employed and were either injured or died in an accident arising out of or in the course of employment. But there must be firm findings of fact recorded by the Commissioner on breach by the insured of the terms and conditions of the contract of insurance, and whether the case in point falls within the purview of the provisions of the Act, and whether the insurance company is liable to indemnify the insured employer. When all the parameters are satisfied in terms of the principles laid down in *Baljit Kaur* case (supra), I then do not see why on first principles, the 'pay and recover' mechanism should not be adopted and applied by the Commissioner under the Act when public money is

involved the Court may be duty bound to give effect to the 'pay and recover' principle and not leave claims of recovery of award money made by insurance companies and not leave them to be determined in a separate proceeding adjudicated before the civil court. I am therefore inclined to hold that the equitable and quick reaction principle evolved by the Supreme Court in motor accident claim cases should be applied to employee compensation cases as well after they are adjudicated and determined by the ECA fora. If the principle is applied to the cases in hand it would also serve a valuable social purpose of paying compensation without delay to the injured and the legal representatives of the employees who die in accidents arising out of and in the course of employment and thereafter keep them out of the agony of litigation leaving the Insurer and the Insured in the fray to sort out their differences in execution proceedings without a shadow falling on the victims.

(Para 8)

Ashwani Talwar, Advocate for *the appellants* (FAO No.458 of 2014, 1756 of 2014, 5917 of 2013).

Harsh Aggarwal, Advocate, for *the appellants* (FAO No.704 of 2014)

R.M.Suri, Advocate, for *the appellants* (FAO No.3014 of 2010)

Amrish Sharma, Advocate, for the respondents (FAO No.458 of 2014).

Ashish Gupta, Advocate, for respondents No.1 to 6 (FAO No.5917 of 2013)

B.S. Jaswal, Advocate, for respondents No.2 and LRs of respondent No.1.(FAO No.3014 of 2010)

Arun Yadav, Advocate, for respondents No.1 to 6 (FAO No.1756 of 2014)

**RAJIV NARAIN RAINA, J.**

(1) This order will dispose of five first appeals from orders being FAO No.458 of 2014, FAO No.704 of 2014, FAO No.1756 of 2014, FAO No.3014 of 2010 and FAO No.5917 of 2013. By consent, the lead case for culling out the facts is FAO No.458 of 2014. These appeals have been filed either by the New India Assurance Company Limited, the Oriental Insurance Company Limited, ICICI Lombard

General Insurance Company and Bajaj Allianz Insurance Company limited.

(2) The appeals arise from the orders passed by different Commissioners under the Employee's Compensation Act, 1923 as amended. In each of these cases, the award has been passed in favour of the claimants either on account of injuries sustained and suffered in an accident by the victim or from deaths arising out of and in the course of employment. In each of these cases, the employer/s or the victim/s though had the insurance policies with the respective insurance companies but was not indemnified where it was established that there was a breach of the terms and conditions of the policy. The main prayer in the appeals is to apply the equitable legal principle evolved by court in awards of compensation in cases of motor accidents actionable under Section 166 of the Motor Vehicles Act, 1988 so that in case of deviation from contract of insurance, a person liable to pay for tortious and actionable negligence resulting in bodily harm or death caused by accidents, to mulct the one who committed default or breach of the terms and conditions of insurance policies. In cases where the Tribunal awards compensation to the legal representatives of the victims, the question immediately arises as to who pays the amount of compensation. Where there is a clear-cut liability on the insurance company covered by an insurance policy and premium paid and the accident taking place during the currency of the period of insurance, then the insurance company pays. However, when there is a breach of the conditions of the policy by the insured, no fault can be found with the insurance company and therefore a valuable legal principle of far reaching consequences has been evolved by the Supreme Court in *M/s National Insurance Company Limited versus Baljit Kaur and Others*<sup>1</sup> judicially legislating the salutary principle of "pay and recover" whereby the insurance company first pays the compensation awarded to the claimants but has a right to recover the amount from the insured when there is no liability falling on the insurance company by reason of breach of contract of insurance or any deviation there from. The judgment of the Supreme Court changed the complexion of the recovery mechanism. The purpose and object of awarding of compensation being beneficial in nature to secure to the claimants compensation and not being left without the fruit of awards due to prolonged litigation, for which reason, the salutary judicial device was propounded by the Supreme Court in the aforesaid case to ameliorate

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<sup>1</sup> (2004) 2 SCC 1 : AIR 2004 SC 1340

continued suffering of claimants in appeals, execution proceedings etc. The principle evolved is by now well embedded in motor accident claim cases as the principle of pay and recover. In this summary way the execution takes place before the Tribunal itself at the hands of the Insurer who is found not liable to indemnify the Insured. The insurer is not driven to recover money paid towards compensation before the civil court which may take years. The present batch of appeals involves compensation cases arising out of the Employee's Compensation Act, 1923. The mechanism of pay and recover has gained ground in numerous subsequent judgments of the Supreme Court and in various High Courts and this Court to become a legal proposition and a legal principle. But it seems the principle has not yet been heralded in proceedings under the Employee's Compensation Act, 1923. The moot point to be answered in the present set of appeals is whether the principle of pay and recover should be extended to the present Act or not on first principles. There being no empowering direct provision in the Act with which we are concerned

(3) It is the contention of lead counsel Mr. Ashwani Talwar that though the law with respect to 'pay and recover principle' has been developed with reference to the Motor Vehicles Act, 1988 where the Motor Accident Claims Tribunal exercises jurisdiction to award or deny the compensation etc. to persons injured or in the event of death caused by motor accidents. It is his submission that this principle evolved in claim cases arising out of the motor accidents should be applied to cases of compensation awarded by the Workmen's Compensation Commissioners under the Employee's Compensation Act, 1923 and the appellant insurance company should not be burdened by resort to tardy suits for recovery of money against the insured but to directly move an application before the Commissioner himself for directions for recovering the amounts from the insured on the Court stamped principle evolved by the Supreme Court in *Baljit Kaur* case when facts justify and findings ordain, determined judicially in favourable cases by an adjudication on breach of terms of contract of insurance. In view of the submission made which is of far reaching consequences in the working of the Employee's Compensation Act, 1923 a substantial question of law arises in these appeals as to whether the principle of 'pay and recover' should at all be applied in such cases.

(4) In the present case, the appellant after paying the amount of compensation awarded, moved an application before the Commissioner for recovering the compensation paid to the injured, which has been declined on the ground that there is no provision in the Employee's

Compensation Act, 1923 authorizing the Commissioner to do so and against which rejection, the present appeal has been preferred on the legal issue without disputing the facts of the case.

(5) The question raised is not only a substantial question of law but is of general public importance as well. The following two questions arise for answer: -

1. Whether execution applications in respect of the proceedings arising under the Employee's Compensation Act are to be filed and decided by the Commissioner under the EC Act itself after awards are announced?
2. Whether as per the provision of Section 8 of the Employee's Compensation Act, 1923 it is for the Commissioner to entertain execution applications for execution of the orders to the extent of recovery of amount found in favour of the Insurance Company and against the respondent-employer?

(6) The manner in which the Commissioner is required to distribute the awardable compensation is laid down in Section 8 of the Act, which reads as follows:-

“8. Distribution of compensation.—[(1) No payment of compensation in respect of [an employee] whose injury has resulted in death, and no payment of a lump sum as compensation to [an employee] or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

[Provided that, in the case of a deceased [employee], an employer may make to any dependant advances on account of compensation 3[of an amount equal to three months' wages of such [employee] so much of such amount] as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.]

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.]

(4) On the deposit of any money under sub-section (1), <sup>4</sup>[as compensation in respect of a deceased [employee]] the Commissioner <sup>5</sup>[\*\*\*] 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.

[(5) Compensation deposited in respect of deceased [employee] shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased [employee] or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the [employee] to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the [employee].]

[(8) Where an application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation to as to the manner in which any sum payable to any such dependant is to be

invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

[(9)Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.]”

(7) Section 20 deals with appointment of Commissioners. Sub Section 4 of Section 20 lays down that every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code. Section 31 deals with recovery and lays down that the Commissioner may recover as an arrear of land revenue any amount payable by any person under the Act whether under an agreement for payment of compensation or otherwise and the Commissioner shall be deemed to be a public officer within the meaning of Section 5 of the Revenue Recovery Act, 1890. Thus, the Commissioner is both a public servant and a public officer, the first under the penal law and in the second capacity, as a civil servant of the State Government. If the Commissioner is empowered to recover the amounts awarded by it which remain unpaid or partly unpaid, it can well act as an execution Court and therefore the first question is answered in the affirmative. It is held that the execution applications lie before the Commissioner under the Act and are to be filed in the designated Forum to be decided by him.

(8) To the second question, the answer seems quite apparently leaning in favour of the insurance companies in appeal in cases where it is established beyond doubt that they cannot be saddled with liability under the insurance policies but were duty bound to pay the amount of compensation to the claimants in the first instance and then seek to recover the amount from the insured with whom the victims were employed and were either injured or died in an accident arising out of or in the course of employment. But there must be firm findings of fact recorded by the Commissioner on breach by the insured of the terms

and conditions of the contract of insurance, and whether the case in point falls within the purview of the provisions of the Act, and whether the insurance company is liable to indemnify the insured employer. When all the parameters are satisfied in terms of the principles laid down in *Baljit Kaur* case (supra), I then do not see why on first principles, the ‘pay and recover’ mechanism should not be adopted and applied by the Commissioner under the Act when public money is involved the Court may be duty bound to give effect to the ‘pay and recover’ principle and not leave claims of recovery of award money made by insurance companies and not leave them to be determined in a separate proceeding adjudicated before the civil court. I am therefore inclined to hold that the equitable and quick reaction principle evolved by the Supreme Court in motor accident claim cases should be applied to employee compensation cases as well after they are adjudicated and determined by the ECA fora. If the principle is applied to the cases in hand it would also serve a valuable social purpose of paying compensation without delay to the injured and the legal representatives of the employees who die in accidents arising out of and in the course of employment and thereafter keep them out of the agony of litigation leaving the Insurer and the Insured in the fray to sort out their differences in execution proceedings without a shadow falling on the victims.

(9) Consequently, the appeals are accepted and the impugned orders declining the application/s for recovery of the awarded amounts from the respondent-employer/s are set aside and the proceedings are restored to their original numbers for further adjudication before the Commissioners on merits in terms of this order, which order will apply *mutatis mutandis* to the connected appeals.

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*M. Jain*

*Before K.Kannan, J.*

ALISHA SEHJAL—*Petitioner*

*versus*

STATE OF PUNJAB AND OTHERS—*Respondent*

CWP No. 12180 of 2014

August 7, 2014

*Constitution of India, 1950—Art.226—Education Matters—  
Admission—Petitioner participated in entrance examination for*