

*Before Mukul Mudgal, C. J & Ajay Tewari, J.*

**P.C.PINTERNATIONAL LTD.,—Appellant**

*versus*

**SMT. NEELAM KAUR AND OTHERS,—Respondents**

LPA No. 577 of 1996

in F.A.O. No. 309 of 1995

17th August, 2010

*Constitution of India, 1950—Art. 226—Workmen's Compensation Act, 1923—Commissioner holding Insurance Company liable to pay penalty and interest on amount of compensation—Under provisions of insurance policy Company undertaking to indemnify only to reimburse compensation and no liability to pay interest and penalty—Apeal allowed, judgment of Single Judge set aside and Insurance Company held not liable to pay any penalty or interest on workmen's compensation awarded by Commissioner.*

*Held*, that learned Single Judge's judgment cannot be sustained, moreover, since the learned Single gave no reason for distinguishing the judgment of Hon'ble the Supreme Court in **New India Assurance Co. Ltd. versus Harshadbhai Amrutbhai Modhiya, 2006(2) R.C.R. (Civil) 814**, but only referred to the same. Insurance Company shall not liable to pay any penalty or interest on the workmen's compensation awarded by the Commissioner. However, that would not preclude the civil court from foisting any additional liability on the Insurance Company if the correspondence between the parties gives rise to any subsidiary contract/liability.

(Para 8)

D.K. Gupta, Advocate *for the appellant.*

R.K. Bashamboo, Advocate *for the respondents.*

**MUKUL MUDGAL, C.J (ORAL) :**

(1) This LPA arises from a judgment of the learned Single Judge which in its entirety reads as follows :—

“Mr. Harsh Aggarwal, has shown me a photocopy of the receipt dated 6th April, 1995 signed by a representative of the appellant-company. The receipt not only bears the date at the heading of the receipt, but also underneath the signatures of the representative of the appellant. It is clearly recorded in the receipt that the claim has been settled by way of full and final payment in respect of Fatal Accident Workmen Compensation Claim No. 23121/WC/00012/90 in **Gurdip Singh versus Punjab Chemi Plants Ltd.**, against Policy No. 23121/WC/00012/90. Since the claim of the appellant has been settled in full by the Insurance Company, no further question arises. Accordingly the appeal is dismissed.”

(2) While admitting the appeal, this Court passed the following order on 11th December, 1996 :—

“For the reasons stated in the application, delay is condoned.

Appeal is admitted i.e. with respect to the question of liability between owner and the Insurance Company. *Qua* the claimants, the appeal is dismissed as there is no error pointed out in it.

Stay is modified to the extent that amount deposited with the Workmen Compensation Commissioner shall be released to the claimants i.e. there is no stay of operation of the award of the Authority *qua* the claimants.”

(3) The issue arising in the present appeal is to the effect of the insurance policy, the relevant clause of which reads as under : --

“It is hereby understood and agreed that the cover provided under this Policy shall not extend to indemnify the Insured/Insureds in respect of any interest and/or penalty which may be imposed on him/them on account of his/their failure to comply with the requirements laid down under the Workmen’s Compensation Act, 1923 and subsequent amendments of the said Act.”

(4) The order of the Commissioner, Workmen Compensation Act, Panipat reads as follows :—

“The respondent No. 1 had to deposit the compensation money within the period of 30 days from the date of accident but till today no amount has been deposited. Keeping in view the difficulty of the petitioners due to the non-deposit of the compensation money by the respondent No. 1, 40% penalty along with 12% rate of interest is imposed upon the respondent No. 1 under Section 49 of the Workman Compensation Act. The following claims of the petitioners are accepted :—

1. Amount of compensation	..	Rs. 87,980.00
2. Interest @ 12% from 20.10.89	..	Rs. 49,268.80
3. Penalty @ 40%	..	Rs. 35,192.00
4. Expenses	..	Rs. 2,000.00
Total:		Rs. 1,74,440.80

This Court passes the decree of Rs. 1,74,440.80 (Rupees One lac seventy four thousand four hundred forty and paise eighty only) in favour of the petitioners. The respondent No. 1, i.e. M/s P.C.P. Company is hereby directed to deposit the decretal amount in this Court within 30 days. In case the decretal amount is not deposited then the amount of interest will carry on.”

(5) The order was passed as the Appellant—Company was proceeded against *ex parte*. Learned counsel for the appellant—Company states that the Insurance Company is not only liable to pay the compensation amount which was computed at Rs. 70,384 but is also liable to pay the penalty and interest therein as determined by the Commissioner, Workmen Compensation Act in the order extracted above. Insofar as this Court is concerned, the only issue arises is to the effect of the insurance policy which clearly states that penalty and interest is not payable.

(6) Counsel for the respondents has relied upon a judgment of Hon'ble the Supreme Court in **New India Assurance Co. Ltd., versus Harshadbhai Amrutbhai Modhiya, (1)**.

(7) The relevant part of the judgment reads as follows :

- “13. By reason of the provisions of the Act, an employer is not statutorily liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer, the insurer, shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor Vehicles Act does not have a statutory liability. Section 17 of the Act does not provide for any restriction on the matter of contracting out by employer *vis-a-vis* the insurer.
14. The terms of contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provisions of the Insurance Act, in terms of the provisions of the Insurance Act, an insured is bound to pay premium which is to be calculated in the manner provided for therein. With a view to minimize his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in law.”
22. The law relating to contracts of insurance is part of the general law of contract. So said Roskill Lord Justice in **Chave versus Bremer [1976] (Q.B. 44)**. This view was approved by Lord Wilberforce in **Reardon Smith versus 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 Colinvaux’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 has 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."

(8) Since the issue involved in the present appeal is squarely covered by the judgment of Hon'ble the Supreme Court extracted above, we are satisfied that the learned Single Judge's judgment cannot be sustained, moreover, since the learned Judge gave no reason for distinguishing it but only referred to the same. Counsel for the appellant has sought to rely upon certain correspondence exchanged between the parties and has referred to a civil suit filed before the Civil Court. We are not concerned with the issue raised in the Civil Court which is based on correspondence exchanged between the parties but are only concerned with interpretation of the insurance policy. We have already concluded that the Insurance contract does not cover penalty and interest payable by the appellant. Accordingly while setting aside the judgment of the learned Single Judge, we hold that the Insurance Company shall not liable to pay any penalty or interest on the Workmen's compensation awarded by the Commissioner. However, that would not preclude the civil court from foisting any additional liability on the Insurance Company, if the correspondence between the parties gives rise to any subsidiary contract/liability.

(9) The appeal stands disposed of.