

Madan Gopal Vs. Anandi Lal

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Court : Rajasthan

Decided On : Oct-11-1991

Reported in : II(1992)ACC429; 1992ACJ543; (1999)IIILLJ585Raj; 1991(2)WLC335; 1991WLN(UC)315

Judge : B.R. Arora, J.

Acts : Workmen's Compensation Act, 1923 - Sections 3 and 4A

Appeal No. : S.B.C.M.A. Nos. 300/1989, 10/1990 and 105/1991

Appellant : Madan Gopal

Respondent : Anandi Lal

Advocate for Def. : G. Vaishnava, Adv. in S.B.C.M.A. No. 105/1991,; A.K. Rajvanshi, Adv. in S.B.C.M.A. No. 105/1991 and;

Advocate for Pet/Ap. : A.K. Rajvanshi, Adv. in S.B.C.M.A. No. 10/1990,; G. Vaishnava, Adv. in Adv. in S.B.C.M.A. No. 105/199

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. These three appeals raise a common question of law and they can be decided by this common judgment. For proper appreciation of the controversy, the facts of S.B. Civil Misc. Appeal No. 10 of 1990 Madan Gopal and Ors. v. Anandi Lal are taken into consideration.

2. Madan Gopal and Smt. Pana Devi - the dependants of the deceased Balu Ram filed a claim petition under Section 19 of the Workmen's Compensation Act before the Workmen's Compensation Commissioner, Bikaner. The case of the claimant-dependant was that on May 30, 1985, at about 4.15 p.m. Uma Shanker, the son of the petitioners who was employed as the Conductor in bus No. RRG 3891, died during the course of his employment while he was on duty. It was averred in the claim petition that at the relevant time, the deceased was drawing the salary of Rs. 600/- per month and an extra allowance of Rs. 5/- per day. His total income was, thus, Rs. 750/- per month and at the time of his death, he was 20 years of age. It was, also averred that a notice regarding the death was given to the non-applicant No. 1 and the bus, at the relevant time, was insured with the defendant No. 2 the National Insurance Company Limited, Sikar. The claimant-dependants, therefore, claimed an amount of Rs. 67,200/- as compensation. The claimants further averred in the claim petition that they asked the non-applicants to pay the amount of compensation but they did not pay any heed to it and, therefore, they are entitled for interest @ 12% per annum as well as 50% penalty, on the claim amount. The notice of this claim petition was served on the non-applicants, but in spite of that notice, no amount was paid to the claimants. The non-applicant No. 1, i.e., Anandi Lal (the owner of the bus) admitted the claim of the claimant-dependants and took a stand that the bus No. RRG 3891 was insured with the defendant No. 2 M/s. National Insurance Company and, therefore, the insurer is liable to make the payment of the amount of compensation. The defendant No. 2, the National Insurance Company contested the claim petition filed by the claimants and averred that the deceased Uma Shanker was neither in the employment of Anandi Lal nor he was working as a Conductor and the claim petition has been filed in collusion with the non-applicant No. 1. The question of jurisdiction of the Workmen's Compensation Commissioner for the maintenance of the claim petition was also raised. The learned Workmen's Compensation Commissioner, after trial, awarded the compensation amounting to Rs. 67,200/- but refused to grant the

interest on this amount. He, also, refused to levy the penalty. It is against this award dated October 5, 1989, passed by the Workmen's Compensation Commissioner not levying penalty and interest that the present appeals have been filed by the appellant-claimants.

3. Heard learned counsel for the parties.

4. It is contended by the learned counsel for the appellant that the accident in the present case took place on May 30, 1985, and Uma Shanker died at the spot, but no amount of compensation was paid either by the employer or by the insurer and, therefore, as per the provisions of Section 4A of the Workmen's Compensation Act, 1923 (hereinafter referred as 'the Act') it was the duty of the Workmen's Compensation Commissioner to have awarded the interest as well as should have levied the penalty and the appellants are entitled to get the interest as well as the penalty from the insurer. In support of its case, the learned counsel for the appellants has placed reliance over the judgment rendered in : Pratap Narain Singh Deo v. Shriniwas Sabata (1976-I-LLJ-235) (SC), Mathura Prasad v. Saiyed Khurshed Ahmed 1982 ACJ (suppl) 153, Arjitsingh Fakirsingh Potiwala v. Omega Engineering Corporation 1985 ACJ 115, Smt. Gawari v. Pratap Singh 1988 (1) RLW 29 and United Insurance Company Limited v. Roop Kanwar 1991 ACJ 74. The learned counsel for the respondent, i.e., Insurance Company, on the other hand, has submitted that under the Workmen's Compensation Act, the insurance company is not liable to make any payment against the interest and penalty because the liability does not include the liability to any interest and penalty. In support of its case, the learned counsel for the respondent has placed reliance over the Judgment rendered in the Oriental Fire and General Insurance Company v. Matias Burta 1985 ACJ 732, the Oriental Insurance Company v. Jevaramma (1994-III-LLJ (suppl)-1036) (Kant), the Oriental Insurance Company Limited v. Hasmat Khatoon 1989 ACJ 362, National Insurance Company v. Chandrawati and Oriental Fire and General Insurance Company v. Babulal Mehta (S.B.C.M.A. No. 204/1983).

5. Before dealing with the contentions raised by the learned counsel for the appellants, I would like to consider the law relied upon by the learned counsel for

the parties.

6. In *Pratap Narain Singh Deo v. Shrinivas Sabata* (supra) the case for consideration before the Hon'ble Supreme Court was : whether it is the duty of the employer to pay compensation as soon as the personal injury is caused to the workmen and if the employer fails to make payment of the compensation amount then whether the employer is liable for interest and penalty under Section 4A of the Act. The Apex Court, after considering the law on the point, came to the conclusion that it was the duty of the employer under Section 4A(1) of the Act to pay compensation at the rate provided by Section 4 as soon as the personal injury was caused to the workmen and as he failed to do so, and took a false and frivolous objection regarding the jurisdiction of the Commissioner and forced the claimant to file an application before the Workmen's Compensation Commissioner for determination of claim amount, therefore the Apex Court held that the claimants are entitled for interest and penalty.

7. In *Mathura Prasad v. Saiyed Khurshed Ahmed* (supra) the case before the Allahabad High Court was whether the Workmen's Compensation Commissioner, while passing the award, did not award the interest and penalty and whether at the later stage, he can award the interest and penalty under Section 4A of the Act? The learned Judge of the Allahabad High Court, after considering the law on the point, came to the conclusion that if the employer continues to make default in payment of the amount of compensation and the compensation is not paid even after a long time then the Workmen's Compensation Commissioner can award interest and penalty under Section 4A of the Act. This case, relied upon by the learned counsel for the appellants, thus, does not lend any support to the appellants because the similar controversy is not there in the present case.

8. In *Arjitsingh Fakirsingh Potiwala v. Omega Engineering Corporation* (supra) the case before the Bombay High Court was that if a workman claims compensation in higher wages group and more loss of earning capacity, than actually sustained by him whether he is entitled for the penalty and interest, the Court, after considering the law on the point, came to the conclusion that Section 4A does not prevent awarding the penalty to a workman if he claims compensation in higher wages

group and more loss of earning capacity than actually sustained by him. But when the employer does not make any provisional payment, the workman will be entitled to penalty and interest. This judgment cited by the learned counsel for the appellant, also, does not help the appellants because it is not relevant so far as the controversy in the present case is concerned. The judgment nowhere lays down that the insurer is liable for indemnifying the interest and penalty.

9. In *Smt. Gauri v. Pratap Singh* (supra) the question for consideration before this Court was whether the insurance company can be impleaded as a necessary party as employer in a case under the Workmen's Compensation Act and whether the insurance company can be required to satisfy the decree passed against the employer, judgment debtor specially when the insurance company has been once dropped as an opposite party HON'BLE MR. CHOPRA J. after considering the law on the point, held that it is not essential for the claimants to implead the insurance company as a necessary party in the proceedings under the Workmen's Compensation Act in which they claimed compensation against the employer or if the employer is insured then together with against the insurance company, also. The insurance company is not an employer and, therefore, it need not be impleaded as a necessary party to the proceedings in which the claim for compensation is made against the employer and the requirement is that the Court must issue a notice to the insurance company and the insurance company is entitled to get it impleaded as a party after the receipt of the notice from the Court. The Court further observed that the insurance company is obliged to satisfy the decree passed against the employer as a judgment-debtor even if the petitioners have prayed for deletion of its name from the array of the respondent.

10. In *United Insurance Company Limited v. Roop Kanwar* (supra) the question for consideration before this Court was whether the insurance company is liable to pay the compensation, interest and penalty even if the employer insured is not insolvent? The Court, after considering the law on the point, came to the conclusion that the insurance company is liable to pay compensation even if the insured employer is not insolvent. The Court further held that by charging the additional premium, the insurance company agreed to indemnify the insured employer against his liability under the Workmen's Compensation Act and

admittedly the amount of penalty and interest has been levied by the Commissioner under Section 4A of the Act and the Commissioner rightly made the appellant liable to pay the amount of interest and penalty.

11. In *Oriental Fire and General Insurance Company Limited v. Mafias Burta* (supra) a single Bench of the Orissa High Court considered the matter regarding imposition of penalty and interest and after considering the law on the point, the Court came to the conclusion that the provisions of Section 4A (3) relating to the penalty and interest which takes the liability to indemnify the employer, is not the employer and, therefore, not liable to indemnify the amount of penalty and interest.

12. In *Oriental Insurance Company v. Jevaramma* (supra) the question for consideration before the Karnataka High Court was whether the insurance company is liable to meet only the compensation payable for the risk covered and not the penalty and interest? The Division Bench of the Karnataka High Court, after considering the law on the point, came to the conclusion that unless the terms and conditions of the insurance policy specifically include the payment of penalty and interest, the insurance company is not liable for the payment of penalty and interest.

13. In *Oriental Insurance Company v. Hasmat Khatoon* (supra) the matter for consideration before the Delhi High Court was, whether the insurance company is liable for the payment of penalty and interest. The Single Bench of the Delhi High Court held that the liability of the insurance company is only to pay the compensation and the word 'liability' does not include the interest and penalty.

14. In *National Insurance Company v. Chandrawati* (supra) the matter for consideration before this Court was : Whether the employer is liable to make payment of the amount of penalty and interest imposed for the late payment of the amount of the compensation? This Court held that under Section 96 (I) of the Motor Vehicles Act read with Section 4A(3) of the Workmen's Compensation Act, the insurance company is liable to make the payment of the interest but, however, as Section 96 (2) of the Motor Vehicles Act is silent regarding the payment of penalty, therefore, the insurance company is not liable to make payment of the amount of penalty and the owner of the truck is liable to pay the amount of penalty.

h ON'BLE MILAP CHANDRA, J., while deciding this case took the view somewhat distinct which was taken by His Lordship in the case of United India Insurance Company Limited v. Roop Kanwar (supra). The case in Roop Kanwar's case was decided after taking into consideration the relevant provisions of the insurance policy while the present case was decided solely on the basis of the provisions of Section 96(2) of the Motor Vehicles Act and without considering the other provisions. It is, no doubt, true that under Section 96 of the Motor Vehicles Act, there is no provision for imposition of the penalty and, therefore, the penalty cannot be imposed. But if the provisions of Sections 95 and 96 of the Motor Vehicles Act are read alongwith Section 4A(3) of the Workmen's Compensation Act and the condition of the insurance policy then the penalty can be levied on the employer as well as the insurance company.

15. In the Oriental Fire and General Insurance Company v. Babu Lal Mehta (supra) the matter for consideration before the Single Bench of this Court was whether the insurance company can be directed under the Workmen's Compensation Act to indemnify the worker? The Court, after considering the law on the point and placing reliance over the Single Bench Judgment of this Court in the case of R.B. Moondra v. Bhanwari Bai 1970 AIR Raj 111 came to the conclusion that the insurance company cannot be directed to indemnify the workmen. The Court, however, did not allow the insurance company to recover back the amount from the dependants as ultimately the employer can recover this amount from the insurance company. As the amount of penalty and interest was not paid, the Court, therefore, held that the amount will be recovered by the dependants of the employee from the employer. While deciding this case, as well as the case of R.B. Moondra and Others (supra), this Court held that the insurance company does not fall within the definition of the word 'employer' as defined in Section 2(e) of the Act. The Court, also held that under Section 14 of the Act, the liability of the insurance company to indemnify the employer comes into play only if the conditions of Section 14 are satisfied and as the conditions of Section 14 are not satisfied, therefore, the insurance company is not liable to make the payment. While deciding this case, the provisions of Sections 13 and 19 of the Act it appears, were not brought to the notice of the Hon'ble Judges. According to Section 13 of the Act, where a workman has recovered the compensation in

respect of any injury caused under the circumstances creating a legal liability of some persons other than the person by whom the compensation was paid for damages with respect thereof; the person to whom the compensation was paid and any person who has been called upon to pay and indemnify the same under Section 12 shall be entitled to be indemnified. [In view of the provisions of Section 13 of the Act, the employer is, thus, entitled to be indemnified by the insurance company as the vehicle was insured with the insurance company. According to Section 19, if any question arises in any proceedings under the Workmen's Compensation Act as to the liability of any person to pay the compensation, the question shall be settled by the Workmen's Compensation Commissioner and no civil Court shall have the jurisdiction to settle or deal with or decide any question which under the provisions of the Act is required to be settled by the Commissioner or to enforce any liability incurred under this Act. Section 19(1) of the Act makes it clear that the Workmen's Compensation Commissioner, while exercising his powers under this Act, in deciding the liability of any person to pay compensation in any proceedings under the Act, thus, can direct the insurer to make the payment or discharge the liability and the insurer cannot be kept out of the meaning of the expression 'any person' as given under Section 19(1) of the Act. The expression 'any person' takes within its ambit the insurance company also and the language of Section 24 of the Act which permits an official of the insurance company to make any appearance, application or act, required to be done by the insurance company before the Commissioner, takes within its purview the insurer, also. Even otherwise, recognition of the insurer's liability will advance the object of the Act and will, also, harmonize well with the provisions of Sections 95 and 96 of the Motor Vehicles Act (corresponding to Sections 147 and 149 of the New Act). It shall, also, avoid the friction, uncertainty and confusion which will be crept-in in a situation where neither the employer nor the workman get the expected security and protection when the insurance company agrees in the insurance policy to discharge the employer's liability under the Workmen's Compensation Act then why the Commissioner, after deciding the said liability, cannot direct the insurance company to discharge the said liability. Taking the contrary view would amount to asking the workman to undergo a second litigation if the insurance company refuses to make the payment of the amount decided by

the Commissioner. In a situation where the employer's assets are not sufficient to satisfy the award/order of the Workmen's Compensation Commissioner, the workman, as the assured, would also, be left with no alternative except to go to the Civil Court. Thus, where the insured incurs the liability under the Workmen's Compensation Act in respect of death or bodily injury towards the employer then it will be the responsibility of the insurer to indemnify this liability of the insured. The view taken by me finds full support from the judgment of the Apex Court rendered in *Motor Owner Insurance Company Limited v. Jadavji Keshavji* 1981 ACJ 507, wherein it has been held that under Section 95(2)(a) of the Motor Vehicles Act, the liability of the insured and therefore the insurer's liability (sic.) to indemnify includes the liability under the Workmen's Compensation Act, also. The same view has been taken by this Court in *Smt. Gawari Bai v. Pratap Singh* (supra) and *United India Insurance Company v. Roop Kanwar* (supra).

16. The question, which now requires consideration is whether the insurance company is liable to pay the penalty and interest under the Workmen's Compensation Act or it is the liability of the employer only? For the proper appreciation of the controversy, it will be proper to refer the relevant provisions of the Act.

17. Section 3 of the Act casts a duty on the employer to pay the compensation in accordance with the provisions of Chapter II if a person is caused bodily injury in an accident arising out of and in the course of his employment. Section 4 of the Act prescribes the procedure for the determination of the amount of compensation. Section 4A of the Act provides that the compensation under Section 4 shall be paid as soon as it falls due. Sub-section (2) of Section 4A provides that in cases where the employer does not accept the liability for compensation to the extent it is claimed, he shall be bound to make the provisional payment based on the event of the liability which he accepts and such payment shall be deposited with the Commissioner or paid to the workman, as the case may be without prejudice to the rights of the workman to make any further claim. Sub-section (3) of Section 4A provides that where any employer is in default in making payment of the compensation due under the Act within one month from the date it fell due, the Commissioner may direct, in addition to the amount of compensation, the simple

interest @ 6% per annum on the amount due, if in the opinion of the Commissioner, there is no justification in delay and further an amount not exceeding 50%, shall be recovered by way of penalty.

18. Section 4A of the Act, thus, casts a duty upon the employer to pay the compensation as soon as the personal injury is caused to the workman and if he disputes his liability or the amount of the compensation then, according to Sub-section (2) he can make such payment or deposit it with the Commissioner, as the case may be, without prejudice to the rights of the workman, but if the amount is not paid and the employer commits default in paying the compensation, then the Commissioner has been given power, in addition to the compensation, to allow simple interest @ Rs.6% per annum on the amount due together with the penalty, not exceeding 50% of such amount. The first limb of the argument of the learned counsel for the insurance company is that it is only the defaulting employer who is liable to pay the penalty and interest and not the insurance company. If the employer, by his negligence, incurs an additional responsibility for having violated the statutory requirement then the insurance company cannot be asked to indemnify the assured on that score and, therefore, the liability of the insurance company is only to pay the compensation and not the interest and the penalty. The liability arising under the Act is the accident liability which has to be determined by the Commissioner under the Act though the insurance coverage flows from the Motor Vehicles Act. The composite reading of the provisions of the Workmen's Compensation Act with Sections 95, 96 and 110 (b) of the Act (corresponding to Sections 147, 149 and 167 of the Motor Vehicles Act) makes it clear that in all the motor accident cases, it is the statutory duty of the insurance company to satisfy the award as the judgment-debtor and it will not make any difference whether the award is passed under the Workmen's Compensation Act or under the provisions of the Motor Vehicles Act and whether it relates to the interest or penalty or to the compensation alone. If the liability of the insurance company arises for the principal amount and if the same is not deposited or paid within one month from the date of the accident, as required under Section 4A(3) of the Act then the insurer, also, incurs the liability to pay the penalty and interest and the liability envisaged is the whole liability including the interest and the penalty. Under the Act it is primarily liability of the employer and once primarily the liability is

established then it can be enforced against the insurance company also.

19. It is not in dispute that the bus in question, on which the deceased was working as the Conductor, was covered with the policy of insurance issued by the insurance company under Section 94 of the Motor Vehicles Act. Section 94 of the Motor Vehicles Act provides that such a policy covers a liability arising under the Workmen's Compensation Act, 1923 in respect of death or bodily injury to an employee. Even the policy issued by the insurance company contains the endorsement No. 16 which also, provides that in consideration of the payment of the additional premium, it is hereby understood and agreed that notwithstanding anything contained herein to the contrary, the company shall indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendment of the Act prior to the date of this endorsement and so on. It is not in dispute that an additional premium was paid in this case. The question, therefore, for determination is : Whether the amount of interest and penalty falls within the definition of the term 'legal liability'. 'Legal liability' has not been defined anywhere in the Act. According to RANDSUM HOUSE DICTIONARY of the English Language, the word 'legal' means permitted by law or pertaining to law or connected with law or its administration and the dictionary meaning of 'liability' is money owned, debts or pecuniary obligations.' According to the CONCISE OXFORD DICTIONARY 'liability' means being responsible only to limited amount for debts of trading company or what one is liable for, debt of pecuniary obligations. The word 'liability' used in the Act is general and comprehensive in nature and taken within its ambit the interest and the penalty payable under the Act and the word has to be given a full import and cannot be restricted only with respect to the compensation. The context does not compel for such limitation and the word 'liability'..... Connotation. The 'liability' of the employer under the Act to Day compensation, penalty and interest, is created under the Act, which is statutory liability and can be said to be a legal liability which is covered within the condition of the insurance policy. The obligation of the insurer is to indemnify the insured with respect to all the legal liabilities arising under the Act and the liability of the employer with respect to the penalty and interest under 'Section 4A(3) of the Workmen's Compensation Act is evidently the liability under the Workmen's Compensation Act and when an award is passed by the Workmen's

Compensation Commissioner under Section 4A(3) and the employer is, therefore, legally liable to pay that sum in terms of the endorsement No. 16 of the policy and the insurer is, therefore, under an obligation to indemnify the employer with respect to such liability which is a legal liability created under the Act. In this view of the matter, I am of the opinion that the insurance company is liable to make payment of the penalty and interest amounts also.

20. The second limb of this argument is that before passing any order regarding the imposition of the penalty and interest, a notice to show cause is a must. Section 4A(3) provides that if the amount is not paid within the period of one month from the date it fell due then the Commissioner may direct that in addition to the amount of arrears, simple interest @ 6% per annum on the amount due may be recovered and a penalty from the employer together with a further amount not exceeding 50% of such amount, if in the opinion of the Commissioner there is no justification for the delay. A plain reading of Sub-section (3) of Section 4A, thus, makes it clear that so far as the imposition of the interest is concerned, it is sufficient that the amount which fell due, is not paid within one month, but so far as the imposition of the penalty is concerned the satisfaction of the Commissioner that there is no justification for the delay, is a must and for that purpose, in my opinion, the opportunity should be given to the employer for explaining the delay. The imposition of the penalty is not a matter of course but the discretion has to be exercised by the learned Commissioner for imposing the penalty judiciously and after consideration of the circumstances. The imposition of the penalty and the consideration of the circumstances, thus, presuppose an opportunity of hearing to be given to the employer to explain the circumstances for delay which entailed material consequences. If the employer is able to show that there was sufficient cause for the delay in making the payment then it was within the discretion of the Commissioner not to impose any penalty though he may still award simple interest not exceeding 6% per annum. Thus, the Commissioner, in no case, can impose the penalty under Section 4A(3) unless he gives an opportunity of hearing to the employer or to the insurer.

21. What sort of notice is to be given, depends upon the facts and circumstances of each case. Now, in the light of this legal position, I have to see : whether in the

present case, the insurance company was given any notice or not? The claimants filed the claim petition and claimed: compensation. Alongwith the relief for compensation, it was, also prayed in the claim petition that the payment, as required under Section 4A of the Act was not made by the defendants within one month and, therefore, the claimants should be awarded an interest @ Rs.6% per annum. It was further prayed that as there was no justification with non-petitioners in not paying the compensation within prescribed time and, therefore, the additional amount of 50% shall, also, be recovered from the non-petitioners by way of penalty. The defendants-contested the claim petition regarding compensation as well as for the grant of interest and the penalty and both the parties led their evidence on the point. From the facts and circumstances of the case, it is, therefore, clear that the defendants had the notice why the interest and penalty may not be levied and, therefore, it cannot be said that the order in the present case has been passed without any notice to the insurance company. This contention, raised by the learned counsel for the insurance company is, therefore, devoid of any force.

22. The employer or the insurer did not pay the amount of compensation within the period of one month from the date of the accident as required under Section 4A(1) of the Act. Though the employer accepted the claim of the claimants, but instead of making the payment under Sub-section (1) of Section 4A, it went to the extent of taking a false plea that the deceased was not the employee of the defendant No. 1, i.e., the owner of the vehicle and was not working as the Conductor on that bus. The amount of compensation was not paid even after the demand made by the claimant-dependents and they, had to file the claim petition and had to face the agony of pursuing the legal proceedings before the Workmen's Compensation Commissioner for about more than three years. In this view of the matter, I am, therefore, of the opinion that the employer as well as the insurance company made a default in paying the amount of compensation due to the appellants, under the Act from the date it fell due and, therefore, in addition to the amount of compensation, the claimants are entitled to get simple interest @ Rs.6% per annum on the amount of compensation together with a further sum of 50% of the amount of compensation as penalty from the employer, and the insurance company, as per the condition of the insurance policy, is liable to indemnify the

employer for making payment of interest as well as the penalty amount. The Appeal No. 10 of 1990 Madan Gopal v. Anandi Lal is, therefore, allowed.

23. In Civil Miscellaneous Appeal No. 300 of 1989 Oriental Insurance Company v. M/s. Nav Bharat Construction, inspite of the specific order, passed by the Workmen's Compensation Commissioner, determining the provisional amount, neither the employer nor the insurance company paid the amount of compensation within one month from the date it fell due or within one month it was directed to be paid by the Court, and, therefore, in my view, the learned Workmen's Compensation Commissioner was justified in awarding the penalty and interest. It cannot be said that the insurance company had no notice or the opportunity regarding the imposition of penalty. When a specific direction was given by the Court and which was not complied with then the Court was justified in imposing the penalty and interest and the order passed by the learned Workmen's Compensation Commissioner is perfectly in accordance with the provisions of the Act.

24. In S.B. Civil Miscellaneous Appeal No. 105 of 1991 New India Assurance Company v. Ganeshi Bai the claimants, in their claim petition, prayed for the award of the penalty and interest as the amount, which fell due, was not paid by the employer or the insurance company within the period of one month. The insurance company as well as the employer were the parties before the Workmen's Compensation Commissioner and, thus, has sufficient notice regarding the penalty proceedings, also, and, therefore, it cannot be said that the order imposing the penalty and interest was passed without notice to them regarding the imposition of the penalty proceedings. The employer and the insurance company did not pay the compensation within the time and on the contrary, took a false and frivolous objection against the grant of the compensation and took the plea that the case of the claimants is not covered under the Workmen's Compensation Act and these provisions are not applicable to the Municipal Board. In this view of the matter, the learned Workmen's Compensation Commissioner was justified in allowing the interest penalty.

25. In the result, I allow S.B. Civil Miscellaneous Appeal No. 10 of 1990 Madan Gopal v. Anandi Lal and hold that the claimants are entitled for simple interest @ Rs. 6% per annum on the amount of compensation due together with a further sum of 50% of the amount due, as penalty, from the employer and the insurance company jointly and severally as the liability of the employer in the present case is the legal liability, and, therefore, the company is liable to indemnify the liability of the employer.

26. So far as S.B. Civil Miscellaneous Appeal No.300 of 1989 Oriental Insurance Company v. M/s. Nav Bharat Construction and S.B. Civil Miscellaneous Appeal No. 105 of 1991 New India Assurance Company v. Ganeshi Bai are concerned, I do not find any merit in these appeals and the same are hereby dismissed.

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