* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 184/2012 & CM NO. 7702/2012 (for stay)

% **1st April, 2014**

NEW INDIA ASSURANCE CO. LTD. .....Appellant
Through: Mr. D.D.Singh, Adv.

VERSUS

VIRENDER SINGH & ANR. ..... Respondents
Through: Mr. Yogesh Saini, Adv. for R-1 and 2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed by the insurance company under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act') impugning the judgment of the Commissioner dated 25.1.2012 by which the Commissioner awarded compensation to the respondent no.1 herein, petitioner before the Commissioner.

2. The facts of the case are that the respondent no.1 was working with the respondent no.2 herein as a semi skilled worker engaged for replacing the insulator string cross arm of electric tower at Gangrat (H.P). When the

respondent no.1 was engaged in his work on 28.9.2008, the electric tower collapsed and consequently respondent no.1 fell down from a height of 20-25 meters and received multiple grievous injuries over his body. Respondent no.1 was taken to S.Karam Singh Memorial Satnam Hospital, Hoshiarpur, Punjab and was given necessary treatment as his condition was critical. Besides the multiple grievous injuries suffered by respondent no.1, he also suffered various fractures including on his hips and left leg which had to be ultimately amputated below the knee. Respondent no.1 was 25 years old at the time of the accident. Respondent no.1 accordingly filed the subject claim petition under the Act.

3. Before the court below, the employment of the respondent no.1 by the respondent no.2/employer was not denied, but it was contended that respondent no.1 suffered injuries on account of his own negligence. Wages of respondent no.1 being Rs.4000/- and that he was a semi-skilled workman as also the expenditure incurred by employer towards medical treatment etc is admitted. Respondent no.2/employer in fact stated that the appellant/insurance company/respondent no.2 before the Commissioner was given appropriate notice by the letter dated 29.9.2008. It was also admitted

by the employer that the injuries were caused to the respondent no.1 when he was performing his duties.

4. Appellant-insurance company filed its written statement and claimed that injury was not caused in an accident, though the factum of insurance was not denied. In its written statement, the appellant-insurance company contended that the injuries did not arise out of and during the course of employment and that it did not receive the requisite documents from the employer.

5. I may note that both the respondents before the Commissioner, ie the employer as also the appellant-insurance company, did not lead any evidence whatsoever.

6. Commissioner has given the following findings for holding the employer as well as the insurance company responsible for payment of compensation.

> ISSUE NO.2
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> I have gone through the pleadings and the documents available therein. From the perusal of the reply filed by the insurance company respondent No.2 it is stated that a policy under Workmen's Compensation Act was issued by them for:-
>
> Supervisor 1

Skilled labour-10

Semi Skilled labour-10

Unskilled labour-05

In the given situation, when the accident and injury during the course of employment are not disputed the liability of respondent No.1 is fastened and when he is with the valid policy of insurance and the insurance company has not come with any exclusion of indemnity the employer and held accordingly. The said issue is decided accordingly.

Issue No.3

In the claim petition it has been stated that applicant was aged 47 years at the time of accident. However in the medical documents it has been shown that he was aged 25 years. In his affidavit he has deposed that he is 26 years. In the disability certificate his age has been shown 25 years. During the arguments it has been stated that there is typographical error in the claim application and his age was 26 years. The rules of pleadings is not applicable in the proceedings under the Act, hence he can have a benefit as provided under Section 22(3) of the act. Accordingly, his age is taken as 25 years. In the claim petition it has been shown that he was drawing wages years. In the claim application it has been shown that he was drawing wages @ Rs.4,500/- as per the provisions of the said Act. Hence his wages are taken Rs.4,000/-. The medical certificate issued by the medical board shows the medical disablement 75% amputation of left food below knee.

In the given age, wages and liability the petitioner is entitled to the death compensation as under:-

$$\frac{216091 \times 4000 \times 60 \times 75}{100 \times 100} = \text{Rs.3,.90,438/-}$$

* The respondent/management is liable for compensation to the tune of Rs.3,90,438/- and interest @ 12% per annum from the date of accident -30 days therafter i.e. 27.10.2008 till actual

> deposit. The respondent No.1 by having a valid insurance policy is entitled to be indemnified by Respondent No.2. Hence respondent No.2 is directed to deposit accordingly the above amount of compensation and interest with this court by Demand Draft in favour of " *Commissioner Workmen Compensation"* within 30 days from the date of this order failing which the same shall be recoverd by way of land revenue.
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> Given under my hand and seal of this court on 25th day of January, 2012."

7. Liability under the Employee's Compensation Act, 1923 arises if an accident arises out of and in the course of employment. Liability can only be avoided if evidence is led before the Commissioner that either the employee was under the influence of liquor or drugs or the employee had willfully disobeyed an express order given to him. Negligence of an employee is not a ground to dispute or deny the compensation under Section 3. Even if, I assume that this ground is available under Section 3, however even then, liability arises because whereas the respondent no.1 led evidence before the Commissioner and showed that he was not negligent, the appellant-insurance company led no evidence whatsoever; much less on the aspect that the respondent no.1 was negligent. Therefore, in my opinion, clearly once the employment is admitted, insurance policy under the Employee's Compensation Act having been taken out is admitted, and also

that respondent no.1 suffered injury at the time of carrying out his duties, shows that Commissioner rightly allowed the claim petition.

8. Before me, learned counsel for the appellant argued the following aspects:-

(a) Appellant-insurance company is not liable because the employee was guilty of negligence, and therefore no compensation is payable.

(b) The Commissioner has wrongly taken the factor for calculation of compensation while applying the statutory formula at 75%, and which ought not to have been done because respondent no.1 had only suffered amputation of one leg below the knee and therefore was not capable of carrying out other duties, and hence a smaller factor should have been applied. Though at one stage it was argued that no medical certificate was filed before the Commissioner, counsel for the appellant states that a wrong argument in this regard was made because the medical certificate was filed and proved before the Commissioner as ExPW1/3(colly). In fact, this certificate shows that besides the respondent no.1 suffering amputation below the knee in the left leg, he also suffered fractures in the left hip and the right ankle.

(c) Appellant-insurance company is not liable to pay interest inasmuch as the insurance company was not informed of the accident by either the respondent no.1 or the respondent no.2.

9. The first argument urged on behalf of the appellant is completely misconceived as I have already referred above Section 3 of the Act which shows that there is no provision in the said section that an employee cannot claim compensation if there is negligence. All that Section 3 requires is that accident must arise out of and in the course of employment and the employee should not be under the influence of liquor or drugs or that he should have disobeyed an express order. In the present case, it is not the case of either the appellant or the employer that the respondent no.1 disobeyed an express order or that respondent no.1 was under the influence of liquor or drugs. So far as the aspect of negligence is concerned, besides the same being immaterial, it is already noted above that the respondent no.1 led evidence that he was not negligent and the appellant failed to lead any evidence that the respondent no.1 was negligent. The first argument urged on behalf of the appellant is therefore rejected.

10. So far as the second argument as to whether the Commissioner has wrongly taken factor of 75% and that he should have taken a lesser

factor is concerned, in my opinion, in fact the Commissioner should not have taken 75% factor but should have taken 100% factor, inasmuch as, the respondent no.1 was a semi-skilled worker and because of the injuries suffered by him, he is no longer capable of carrying out the work which he used to carry out before the accident. As per Section 2(l) of the Act, total disablement is defined to be such a disablement whereby an employee because of the accident is not capable of doing the work which he was capable of performing before the accident which results in the disablement. The nature of job of the respondent no.1, and who was a semi-skilled employee, was of working at an electric tower and works related thereto and on account of the fact that the respondent no.1 has admittedly lost his left leg below the knee in the accident, shows that there would be total disablement whereby the respondent no.1 cannot carry out the work which he was carrying out prior to the accident. This aspect is buttressed by the fact that besides amputation of left leg of the respondent no.1 below the knee, respondent no.1 also suffered injuries of the fracture of the left hip and also a fracture in the right ankle. I have no doubt whatsoever actually the Commissioner has erred on the side of caution and applied only 75% factor where as actually 100% factor ought to have been applied, but I cannot change the compensation because respondent no.1 has not filed any appeal

against the order of the Commissioner. To conclude discussion on this aspect, I would like to refer the cited judgment of the Supreme Court in the case of ***Pratap Narain Singh Deo Vs. Srinivas Sabata and Anr. 1976 ACJ 141,*** and which holds that disability factor has to be taken as 100% if the employee cannot carryout the work after the accident which work he used to carry out before the accident. The second argument urged on behalf of the appellant is therefore rejected.

11. So far as the third argument is concerned, I may note that the same is fully covered against the appellant in view of the judgment of the Supreme Court in the case of ***Ved Prakash Garg Vs. Premi Devi & Ors. (1997) 8 SCC 1*** which holds that an insurance company may not be liable to pay penalty, but it is definitely liable to pay interest under the policy inasmuch as insurance company takes over liability as per the policy both for compensation as also interest which is payable under Section 4-A of the Act.

12. I may note that it is not the case of the appellant-insurance company before the Commissioner or also before this Court that as per the policy issued by the appellant, the policy had a clause that appellant is not liable to pay interest under the Act. Accordingly, liability will be both of the

employer and the appellant-insurance company to pay the compensation under the Act alongwith interest.

13. Learned senior counsel at the conclusion of the judgment argued one another point that the respondent no.1 should not be entitled to compensation because the employer himself stated that the respondent no.1 is negligent, however this argument is totally misconceived and is already decided in the first argument of the appellant dealt with by this Court and also further noting that neither the employer nor the insurance company led any evidence before the Commissioner.

14. At the conclusion of this judgment, I must state that it is not unusual these days for insurance companies to file totally misconceived appeals. This is one such appeal. Appellant-insurance company has not even led any evidence in this case before the Commissioner. The arguments which were urged before this Court were *ex facie* misconceived and already decided against the insurance company in terms of various judgments which are already stated above in the present judgment. Respondent no. 1 has thus been put to unnecessary expenditure of the present appeal and therefore while dismissing the appeal, I apply the ratio of the judgment of the Supreme Court in the case of ***Ram Rameshwari Devi & Ors. Vs. Nirmala***

Devi & Ors. (2011) 8 SCC 249 which holds that it is high time that in certain litigations actual costs must be imposed, and I direct that respondent no.1 will be entitled to cost of Rs.50,000/- for this appeal. I am also empowered to impose costs in exercise of powers under ***Volume V*** of the ***Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*** which entitles this Court to impose actual costs.

APRIL 01, 2014 **VALMIKI J. MEHTA, J.**
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