

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

FAO(WC) No. 05/2021
CM No. 8646/2021
CM No. 8647/2021
CM No. 8648/2021

New India Assurance Company Limited

...Appellant(s)/Petitioner(s)

Through: Mr. Manzoor A Dar, Advocate with
Mr. Javed Ahmad, Advocate

Vs.

General Manager, NHPC and Others

...Respondent(s)

Through: Mr. G. N. Monga, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
03.09.2026

1. Heard both the counsels. The appellant-Insurance Company, being aggrieved of the award dated 27.07.2021 passed by the Assistant Commissioner, vested with the powers of Commissioner under the Employees' Compensation Act, 1923 (hereinafter referred to as "the Commissioner"), has assailed the same by way of the present appeal.
2. By virtue of the impugned award, passed in the claim petition titled *Rangzaid Awan and Another v. General Manager, NHPC and Others*, the Commissioner awarded compensation to the tune of approximately Rs. 8.98 lakh in favour of the claimants/dependants of the deceased, Adil Rangzaib, who was stated to have been engaged as a casual labourer by respondent No. 2-Contractor.

3. In addition to the principal amount of compensation, the appellant has also been saddled with liability towards interest by invoking Section 4-A of the Employees' Compensation Act, 1923. The specific case set up by the appellant is that the deceased was not borne on the rolls of respondent No. 2 and was, instead, an employee of respondent No. 1-NHPC. On this premise, it is contended that the impugned award, insofar as it fastens the liability to pay compensation upon the appellant-Insurance Company, is legally unsustainable.
4. It is further contended that, having regard to the terms and conditions of the insurance policy, the liability of the appellant-Insurance Company could extend only to the extent covered by the contract of insurance and could not encompass liability towards payment of interest under Section 4-A of the Act.
5. Learned counsel for the appellant, placing reliance upon the judgment rendered by a Coordinate Bench of this Court in *Mohd Abdullah v. Trumbo Cements Industry Limited and Another* MA no. 155/2007 D.O.D 11.7.2023 contended that the appellant-Insurance Company could neither be held liable to indemnify respondent No. 2 in respect of a claim arising out of the death of the deceased nor be directed to discharge the liability towards interest and penalty under Section 4-A of the Act.
6. Per contra, learned counsel appearing for respondent No. 1-NHPC supported the impugned award. It was submitted that the Commissioner, on appreciation of the evidence on record, has

returned a categorical finding that the deceased was working as a labourer under respondent No. 2-Contractor and was covered under the contract of insurance. It is, accordingly, urged that the award has been passed in accordance with law and does not warrant interference in appeal.

7. The material on record reveals that deceased Adil Rangzaib died on 30.06.2017 while engaged in the work of cleaning trash at the inlet of the Dam Site at Salamabad. The deceased, along with other labourers, was stated to be performing his routine duties when he slipped and fell into the dam, resulting in his death on the spot. An FIR in respect of the occurrence was also registered. Though the FIR indicated that the deceased was working in connection with the establishment of respondent No. 1-NHPC, the material before the Commissioner established that respondent No. 2-Farooq Ahmad Ganie was the contractor under whom the deceased had been engaged. It is also borne out from the record that there existed a contract of insurance between respondent No. 2 and the appellant-Insurance Company, covering twelve employees drawing monthly wages of Rs. 8,000/- each.
8. Learned counsel for the appellant strenuously contended that the deceased was an employee of respondent No. 1-NHPC and, therefore, the Commissioner had erred in fastening liability upon respondent No. 2 and, consequentially, upon the appellant-Insurance Company. The contention, however, does not find support from the material on record. When confronted with the finding recorded by

the Commissioner that the name of the deceased figured in the list of labourers engaged by respondent No. 2, learned counsel for the appellant could not successfully controvert the said factual position.

9. Once it stands established that the deceased was engaged as a labourer by respondent No. 2-Farooq Ahmad Ganie, Contractor, and that the employees engaged by respondent No. 2 were covered under the policy of insurance issued by the appellant, the risk arising out of the employment of the deceased would necessarily fall within the coverage of the insurance contract, subject, of course, to its terms and conditions. The Commissioner, therefore, committed no error in fastening upon the appellant the liability to indemnify respondent No. 2 in respect of the principal amount of compensation payable on account of the death of the deceased.

10. It has further been brought to the notice of this Court that, at the time of filing of the present appeal, the principal amount of compensation, quantified at approximately Rs. 8.96 lakh, had already been deposited and subsequently released in favour of the claimants/dependants of the deceased.

11. Apart from the principal amount of compensation, the Commissioner awarded interest to the tune of Rs. 4,35,880/- calculated at the rate of 12% per annum from the date of the accident. Consequently, the appellant was directed to deposit a total amount of Rs. 13,41,880/- within a period of thirty days.

12. The principal amount having already been deposited in compliance with the statutory requirement, the surviving issue that falls for

consideration is whether the liability to pay interest under Section 4-A of the Employees' Compensation Act, 1923, could also have been fastened upon the appellant-Insurance Company.

13. The question relating to payment of interest under Section 4-A of the Act came up for consideration before a Coordinate Bench of this Court in MA No. 155/2007 supra. In that case, the Commissioner had declined to award interest and penalty as contemplated under Section 4-A of the Act. The issue before the Court was whether the Commissioner was justified in declining interest at the rate of 12% per annum as contemplated under Section 4-A (3) of the Act.
14. Upon consideration of the statutory scheme and the law governing the field, the Coordinate Bench dealt with the issue in paragraphs 23, 24 and 25 of the judgment, which are reproduced hereunder: -

“23. From the reading of the Section 4-A and in the light of settled legal position, I am of the considered opinion that the Commissioner has without any reason or justification omitted to consider the claim of the workmen for payment of interest. Indisputably, in the instant case the employer had not offered any compensation to the workmen nor had it even requested the insurer to pay such compensation to the workmen by way of indemnification undertaken by the insurer under the policy of insurance. The employer, thus, admittedly failed to meet its obligation of payment of compensation to the workmen under Section 4 immediately when it fell due i.e., the date on which the workmen received injuries in the blasting incident. The employer committed default in making the payment of compensation within one month from the date it fell due and, therefore, became statutorily liable to compensate the workmen by payment of interest @ 12% per annum, in addition to the amount of arrears of compensation from the date of the accident itself. In the view I have taken, I am fortified by the latest judgment passed by the Hon'ble Supreme Court in the case **“P. Meena raj VS. P. Adi Gurusamy and another Civil Appeal No. 209/2022 decided on 06.01.2022”**

24. Having held that the workmen are entitled to payment of interest in terms of Section 4-A of the Act, it is now necessary for the Court to decide as to whether the liability on account of interest component is to be discharged by the employer or the insurer who has undertaken to indemnify the employer under a policy of insurance. The contention of Mr. Vishnu Gupta, learned counsel appearing for

the insurer is that the interest and penalty as envisaged under Sub Section 3 of Section 4-A of the Act is recoverable only from the employer. He has relied upon a full Bench judgment of High Court of Orissa in the case of **“Divisional Manager, New India Insurance Company Ltd. And Ors. Vs. Bisht Barman and Others.** To the similar extent is the Division Bench judgment passed by the High Court of Himachal Pradesh in the case of **“United India Co. Ltd. Vs. Feroz Begum and Ors., 1998 ACJ 42”**, wherein it is categorically held that the insurance company shall not be liable to indemnify the insured employer for payment of interest and penalty, unless there is a contract between the employer and the insurance company in this regard.

25. I have given my thoughtful consideration to the rival contentions made by the learned counsel appearing for the parties and I am also of the considered opinion that the liability to pay interest or penalty as envisaged under Sub Section 3 of section 4-A of the Act arises on account of omission made by the employer to fulfil its statutory duty of compensating the injured employee by affording him the compensation in terms of section 4 of the Act within a period of one month from the date of accident. It is true that under the policy of insurance covering the injuries and death of the workmen working under the employer, the insurer undertakes to indemnify the employer in respect of any compensation payable to such injured/deceased workmen during the course of his employment, but such contract to indemnify the employer in respect of payment of compensation cannot *ipso facto* extend to the payment and penalty that becomes due from the employer only in case he commits default in payment of compensation due within a period of one month. Unless there is a specific contract of insurance between the employer and the insurer, that the insurer would indemnify the employer in respect of interest and penalty also, no liability can be fastened on the insurer to indemnify the employer for the amount of interest and penalty that may become payable by the employer for committing a default in making the payment of compensation due under the Act within one month from the date of accident.”

15. The view taken by the Coordinate Bench, as referred to above, is re-affirmed, this because the liability to pay interest and penalty, as contemplated under the Employees' Compensation Act, 1923, rests upon the employer. The Insurance Company cannot be held liable to indemnify the insured employer in respect of such interest or penalty, particularly when the terms of the insurance policy expressly exclude liability for any interest and/or penalty imposed upon the insured on account of failure to comply with the requirements of the Act of 1923. The liability of the Insurance

Company, being contractual in nature, is confined to the extent covered under the terms and conditions of the insurance policy and cannot be extended beyond the same. Therefore, the Commissioner erred in fastening upon the appellant-Insurance Company the liability to pay the interest component of the award. The said liability is required to be borne by the employer, i.e., respondent No. 2 in the present case. Accordingly, respondent No. 2 is directed to deposit before the Commissioner the awarded amount towards interest, i.e., Rs. 4,35,880/-. Upon such deposit, the amount shall be released in favour of the dependants of the deceased, namely respondents No. 3 and 4. In the event respondent No. 2 fails to deposit the aforesaid amount within a period of sixty days, the Commissioner shall take appropriate and effective steps for recovery of the same from respondent No. 2. The award shall accordingly stand modified to the aforesaid extent. The matter is, accordingly, disposed of along with all connected CMP(s), and record be sent back.

(SANJAY PARIHAR)
JUDGE

Srinagar
03.09.2026
"Imtiyaz"

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No