**IN THE HIGH COURT OF KARNATAKA**

**KALABURAGI BENCH**

**DATED THIS THE 19TH DAY OF FEBRUARY, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE C.M. JOSHI**

MISCL. FIRST APPEAL NO.203728/2023(ECA)

**BETWEEN:**

DIVISIONAL MANAGER,
UNITED INDIA INSURANCE CO., LTD.,
CENTURY COMPLEX, OPP. SANGAM TALKIES,
SUPER MARKET,
KALABURAGI.
(NOW REPRESENTED BY
THE SR. DIVISIONAL MANAGER
KALABURAGI).

...APPELLANT

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Location: HIGH COURT OF KARNATAKA

(BY SMT. PREETI PATIL MELKUNDI, ADVOCATE)

1. SMT. GEETA W/O LATE YALLAPPA WADDAR,
   AGE: 23 YEARS, OCC: HOUSEHOLD,

2. ARUN S/O LATE YALLAPPA WADDAR,
   AGE: 3 YEARS AND 8 MONTHS, OCC: NIL,

3. TAYAWWA W/O NAGAPPA WADDAR,
   AGE: 53 YEARS, OCC: HOUSEHOLD,

4. NAGAPPA S/O GIDAPPA WADDAR,
   AGE: 58 YEARS, OCC: COOLIE,
   RESPONDENT NO.2 IS MINOR U/G OF

NATURAL MOTHER RESPONDENT NO.1
ALL ARE R/O. VIDYA NAGAR, JEWARGI,
DIST. KALABURAGI-585 101.

5. GOLAYYA C. HIREMATH,
AGE: MAJOR, OCC: CONTRACTOR,
R/O HULLUR HOUSE, VIDYA NAGAR,
JEWARGI, TQ. JEWARGI,
DIST. KALABURAGI-585 101.

…RESPONDENTS

(BY SRI NARENDRA M. REDDY, ADV., FOR R1 TO R4;
R5-SERVED, BUT UNREPRESENTED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 30(1) OF THE EMPLOYEE'S COMPENSATION ACT, PRAYING TO ALLOW THE APPEAL BY SETTING ASIDE IMPUGNED JUDGMENT AND AWARD DT.29.03.2023 IN E.C.A NO.01/2020 PASSED BY THE SENIOR CIVIL JUDGE AND COMMISSIONER FOR EMPLOYEE'S COMPENSATION, JEWARGI.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE C.M. JOSHI

**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE C.M. JOSHI)

1. Heard learned counsel appearing for the appellant-Insurance Company and learned counsel appearing for the respondents-claimants.

2. Though the matter is slated for admission, with the consent of both the parties, it is taken up for final disposal.

3. Being aggrieved by the judgment and award in ECA No.1/2020 dated 29.03.2023 passed by the Senior Civil Judge and Commissioner under the Employees' Compensation Act, Jewargi, (for short 'the Commissioner'), the Insurance Company is before this Court in appeal.

4. The substantial questions of law that arise for consideration in this appeal are as below:

1) Whether the Commissioner is justified in saddling the entire liability against the Insurance Company though the accident occurred outside the location of the risk covered under the policy?

2) Whether the Commissioner is justified in saddling the appellant-Insurance Company to pay the interest at 12% per annum, though the interest and penalty cannot be saddled upon the

Insurance Company as per the terms of the policy?

5. The factual matrix of the case is that the husband of petitioner No.1 – Yallappa was a labourer, working as a Mason under respondent No.1. On 17.04.2020 as per the instructions of respondent No.1, he was working at Jewargi Stadium in the construction work. At about 5.00 p.m., while he stood near the Indoor Stadium Wall, due to strong winds and stormy weather, the wall and pillar fell on the deceased Yallappa causing his death. A case was registered by Police in Crime No.71/2020. The petitioners filed a claim petition against the employer and the insurer contending that the deceased was earning wages of Rs.15,000/- per month, he was aged about 24 years and therefore, they are entitled for the compensation.

6. The respondent No.1 – employer admitted the relationship of employee and employer and contended that deceased was deployed at the construction of the indoor stadium on 17.04.2020 and due to *vis-major i.e.,* stormy

winds, the wall fell down on him and he died. It is contended that he was being paid wages of Rs.475/- per day, *i.e.,* Rs.11,400/- per month. He also stated that he had obtained 'Employees Compensation Liability Policy' from respondent No.2 and therefore, respondent No.2 is liable to pay the compensation.

7. The respondent No.2 denied all the contentions of the petitioners and submitted that it had issued the policy and it was obligatory on the part of respondent No.1 to comply all the conditions. It contended that the award of interest be restricted to the conditions of the policy.

8. The Commissioner recorded the evidence of petitioner No.1 as PW1 and Exs.P1 to P7 were marked. The official of respondent No.2 was examined as RW1 and documents at Exs.R1 and R2 were marked. After hearing both the sides, the Commissioner held the wages of deceased at Rs.11,400/- and applying a factor of 218.47 as per the Schedule to the E.C. Act, as applicable for the age of 24 years, awarded compensation of Rs.12,50,280/-, inclusive

of funeral expenses. It saddled the entire compensation amount to be paid by respondent No.1 – Insurance Company.

9. A perusal of Ex.R2, the policy issued by respondent No.2 would show that the location of the risk is mentioned as Hullur House, Vidya Nagar, Jewargi and the policy covers ten unskilled labourers with declared total monthly wages at Rs.1,05,000/-. It is pertinent to note that the page No.5 of the policy shows that the exclusions are specifically mentioned. Clause (b) of the Exclusions reads as below:

> *"This policy shall not cover the liability of the* ***Insured:***
>
> *xxxxxxxxxxx*
>
> *b) Accident occurring at any other place than the place of places of Employment specified in the* ***Schedule,*** *unless the* ***Employee*** *was at such other place whilst on duty for the purpose of* ***Business*** *and on the directions of the* ***Insured*** *or any of its official authorized to*

*exercise control and supervision over the* ***Employee.***"

10. This clause in the policy would clearly indicate that the policy covers the places where the employee is deployed by the employer for the purpose of his business. Therefore, the contention of the learned counsel for the appellant-Insurance Company that the deceased was deployed at Indoor Stadium Jewargi and therefore, the policy does not cover the accident is bereft of any merit. Hence, the same has to be rejected.

11. The second aspect is, what would be liability of the appellant – Insurance Company. It is pertinent to note that the declared monthly wages for ten employees would be Rs.1,05,000/-. Therefore, per employee, the wages would be Rs.10,500/- per month. When respondent No.1 – employer has admitted the wages of Rs.11,400/- per month, the balance amount has to be paid by the employer. In other words, the appellant – Insurance Company is liable to

pay the compensation of Rs.10,500/- x 218.47 x 50% = Rs.11,46,967/-.

12. The balance amount *i.e.,* Rs.900/- x 218.47 x 50% = Rs.98,312/- and the funeral expenses of Rs.5,000/- are to be paid by the employer.

13. Coming to the liability to pay the interest, it is worth to note that the judgment of the Apex Court in the case of ***NEW INDIA ASSURANCE CO. LTD. V. HARSHADBHAI AMRUTBHAI MODHIYA[1],*** which was clarified later in the case of ***KAMLA CHATURVEDI V. NATIONAL INSURANCE CO,[2]*** holds that the Insurance Company in the absence of any statutory mandate to pay the interest and penalty and the policy not mentioning anything about the liability to pay the interest and penalty, is not liable to pay the same. Therefore, the interest on the entire compensation at the rate of 12% per annum from the date of expiry of 30 days from the date of the accident is to be saddled upon the employer.

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[1] (2006) 5 SCC 192
[2] (2009) 1 SCC 487

14. Thus, the substantial questions of law having been answered accordingly, the appeal succeeds in part. Hence, the following:

ORDER

i) The appeal is allowed in part.

ii) The impugned judgment and award passed by the Commissioner is hereby modified.

iii) The appellant – Insurance Company is liable to pay the sum of Rs.11,46,967/- to the claimants.

iv) The employer *i.e.,* respondent No.5 herein is liable to pay the sum of Rs.1,03,312/- to the claimants.

v) The employer *i.e,* respondent No.5 is also liable to pay the interest at 12% per annum, from the date of expiry of 30 days of the accident till the date of deposit before the Commissioner on the entire sum of Rs.12,50,280/-.

vi) The excess amount deposited by the appellant-Insurance Company before the Commissioner be refunded to it.

Sd/-
**(C.M. JOSHI)**
**JUDGE**

SBS
List No.: 1 Sl No.: 60
CT: AK