

The undisputed fact is that the employee was keeping the gas cylinders in order but, due to some negligence, the cylinder fell on respondent-claimant(s) and both of them sustained injuries and took treatment in the hospital and because of the said injury suffered by the claimant(s), one of the claimant(s), namely, Siddappa carried permanent disability. Both of them approached before the Commissioner for Workmen's Compensation by filing their respective application(s) under the Workmen's Compensation Act, taking recourse to Section 5 of the Fidelity Guarantee, which reads as under:-

“The Company will indemnify the insured against all direct pecuniary loss which the insured shall sustain by any act of fraud or dishonesty committed by any employee of the insured named in the Schedule in the course of his/her employment during the Period of Insurance and discovered during the period of Insurance or within 6 (six) months thereafter or within 6 (six) months after the resignation, dismissal, retirement or death of an employee whichever shall be the earlier.”

The Commissioner for Workmen's Compensation under its impugned award dated 31.10.2006 and also the High Court under the impugned judgment dated 18.02.2010 returned the finding that the alleged incident was due to dishonest act on the part of the employee(s) and the injuries suffered by them are covered under the Fidelity Guarantee since it occurred due to dishonest act on the part of the employee(s).

It is not in dispute that the compensation awarded by the Commissioner for Workmen's Compensation under its award dated 31.10.2006 pursuant to an interim order of this Court dated 23.08.2011 has been made over to the respective claimant(s) in both the appeals.

We have heard learned counsel for the appellant(s) and find substance that the alleged incident is not covered under the Fidelity Guarantee clause as per the terms of insurance and the finding recorded by the High Court under the impugned judgment is unsustainable in law. Since the compensation has already been paid by the appellant(s) to the respective claimant(s), it will not be open now to proceed further to recover the same from the employer in the given facts and circumstances.

Consequently, the appeals succeed and are accordingly allowed. The order of the High Court impugned dated 18.02.2010 is hereby quashed and set aside. We make it clear that the compensation that has been paid to the respective claimant(s) pursuant to an interim order of this Court dated 23.08.2011 is made absolute.

Pending application(s), if any, shall stand disposed of.

.....**J**
(AJAY RASTOGI)

.....**J**
(ABHAY S. OKA)

NEW DELHI;
DECEMBER 09, 2021 .

ITEM NO.102

COURT NO.14

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7378/2011

NATIONAL INSURANCE COMPANY LTD.

APPELLANT(S)

VERSUS

ANIL & ANR.

RESPONDENT(S)

WITH

C.A. No. 7377/2011 (IV-A)

Date : 09-12-2021 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MR. JUSTICE ABHAY S. OKA

For Appellant(s) Mr. Vishnu Mehra, Adv.
 Mr. Anant Mehrotra, Adv.
 Mr. B. K. Satija, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The Civil Appeals are allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI)
COURT MASTER (SH)

(BEENA JOLLY)
COURT MASTER (NSH)

(Signed order is placed on the file)