

Shri R. K. Malviya: They are almost the same.

An Hon. Member: Then, it has not gone down.

Shri R. K. Malviya: There is reduction in comparison to 1960. Also, the figure has also gone down very much in comparison with 1951 to 1955, when it used to be 94 per thousand. In 1961 and 1962 it was 65.

Shri S. M. Banerjee: How does the 1962 figure compare with that of 1961?

Shri R. K. Malviya: It is the same.

Shri S. M. Banerjee: Then, it seems it has not gone down.

Shri R. K. Malviya: It is 65 per thousand I am glad to state that the Government have announced the constitution of a National Council for Safety in Mines with the main objective of providing all sort of safety for the mine workers. This will come into force very soon and will operate. So far as the main Bill is concerned, I have already replied and I will request the hon. Member that under the circumstances which I have narrated he may kindly withdraw the Bill.

Dr. M. S. Aney: What arrangements are there for training?

Shri R. K. Malviya: I have just now said that statutory rules are being framed making it obligatory on mine management to provide vocational training for workmen before they enter the mine. The draft rules will very soon be circulated for comments.

Shri S. C. Samanta: Who will bear the expenses?

Shri R. K. Malviya: That will be decided.

Shri S. C. Samanta: I am glad and, I hope, all the hon. Members of the House will be glad to know that Government has decided to amend this Act again. I think, when Government is going to amend the Act further, not only these penal provisions but other things also—I mean, the opinion of the general public, specially trade unions—should be taken into consideration to see how the amended Act of 1959 has worked so that Government may bring forward another exhaustive amending Bill which will be fruitful for the country and for the industry.

Shri R. K. Malviya: In the tripartite meeting it will be considered. That will include representatives of trade unions.

Shri S. C. Samanta: I would request the hon. Minister to bear in mind the points that I have made out so that they may also be included. I was also feeling diffident because I had brought forward the amendment of some penal sections only. There are other penal sections also which should be included. So, we are thankful that Government has decided this and I would request the House, through you, to permit me to withdraw the Bill.

Mr. Deputy-Speaker: Has the hon. Member the leave of the House to withdraw the Bill?

Some Hon. Members: Yes.

The Bill was, by leave, withdrawn.

17.28 hrs.

INSURANCE (AMENDMENT) BILL

(Amendment of section 31A and 40C)

Shri Indrajit Gupta

Shri Indrajit Gupta (Calcutta South West): Mr. Deputy-Speaker, Sir, I beg to move:

“That the Bill further to amend the Insurance Act, 1938 be taken into consideration.”

[Shri Indrajit Gupta]

My object in moving this Bill is really three-fold. It seeks to remove the lacuna in the Act; it also seeks to remove a social injustice which has been done through this Act to the salaried employees of the general insurance companies and it also seeks to remove a legal disability under which they are suffering as a result of this Act, that is, regarding their right as workmen to raise a specific form of industrial dispute before an industrial tribunal as is provided for in the Industrial Disputes Act, 1947.

With your permission, Sir, I would just like to give a little background of this matter as it appears to me. Section 31A of the Insurance (Amendment) Act was inserted therein by an amending Bill of 1950. The parent Act itself dates from 1938, that is, the pre-independence days and the amending Bill later became Act XLVII of 1950 which introduced the New Section 31A of this Act. By this section 31A a provision has been inserted that a general insurance company referred to in the Act as the 'insurer' can provide for the payment of bonus—I am quoting from the Act from section 31A (c), proviso (vii)—

"The payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration, such bonus, in the case of any employee, not exceeding in amount the equivalent of his salary for a period which, in the opinion of the Central Government, is reasonable having regard to the circumstances of the case."

Provision was made here that any General insurance company which wished to pay bonus in any particular year to its salaried employees would have to apply to the Central Government for its approval, both as to the question whether any bonus should be paid or not as also as to the quantum of that bonus. That is the hub of the whole matter. I may point out that, despite this provision in the Act which was introduced in 1950, an overwhelm-

ing majority of these Insurance companies continued thereafter to pay bonus every year to their employees in the normal course of things. They used to have negotiations with their employees or their employees' associations and bonus agreements were entered into. That can be cited; so many examples are there. Even after the insertion of this section 31A, I would like to point out, on 20th November, 1952, that is practically two years after section 31A came into force, a Circular was issued by the then Controller of Insurance, Shri A. Rajagopalan—I have got a copy of that circular here—addressed to all insurers carrying on insurance business in India. In this circular, it is stated,—with your permission, I would just read a portion out of it.

"It has been found that every year several insurers solicit the opinion of the Central Government under proviso (vii) to subsection (1) of section 31A of the Insurance Act 1938, regarding payment of bonus to their staff, in order to make sure that the Government does not consider it excessive. I am, therefore, to give the following indications on the subject, so as to minimise references in this connection. It is the responsibility of each insurer to decide the rate of bonus that he can afford to pay his staff keeping in view the provisions of sections 40B and 40C of the Insurance Act....

No Insurer whose life insurance fund is in deficit and who has not made any profits in the preceding year in general insurance business as a whole should pay any bonus to its staff."

Having given this direction, the Controller of Insurance goes on to say in the Circular:

"Subject to these considerations,

- (i) The Central Government will not consider any bonus up to

2 months salary as unreasonable.

- (ii) If any higher bonus had been paid by such an insurer in the previous year, then, he may pay bonus at the same rate for the current year, if he thinks fit, without consulting the Central Government.

Yours faithfully,
Sd. A. Rajagopalan.
Controller of Insurance."

This circular was issued to all general insurers carrying on insurance business almost two years after the coming into operation of section 31A which shows how the mind of the Government was working: in order to minimise references, in order to give a general directive that subject to the profitability of the concern, they might without consulting the Central Government go up to the extent of two months salary as bonus for payment to the staff. This shows that the Government was taking a fairly liberal and practical view of the whole question.

Trouble began when this particular case of the Hercules Insurance came up before the Supreme Court. The reference to a tribunal had been made by the Central Government itself. A bonus dispute of the employees of the Hercules Insurance was referred by the Central Government to the Industrial tribunal at Dhanbad to adjudicate the appellant's claim for bonus for the years 1954-55. This was challenged by the company on the ground of section 31A. They claimed that such a reference itself was bad and could not come before the Industrial tribunal, because section 31A makes it imperative on any company to take the prior sanction of the Central Government, executive sanction of the Central Government for paying bonus and also for deciding the quantum of bonus and that, therefore, this was not a field in which the Industrial tribunal could intervene and give a judgment. This view was contested, of

course, before the hon. Supreme Court on behalf of the employees. I may just state it briefly, summarising the arguments that were put forward. It was argued that this proviso (vii) of section 31A is really a proviso which merely enables the Government to prescribe a maximum quantum of bonus. That is really the intention of that proviso. This was one argument.

Another argument used was that this proviso does not take away the Government's authority to refer the bonus dispute to a tribunal. It may enjoin upon it to prescribe the maximum but it does not take away its authority to refer a bonus dispute, if it so wishes, to an industrial tribunal.

The third argument used was that in a particular case Government may hold that payment of bonus is justifiable in general, but the Government itself may wish that the actual quantum should be decided by an industrial tribunal. Subject to general approval, it might even conceivably in a particular case refer the matter to a tribunal to go into the details of the position of a particular company and fix the quantum.

The fourth argument used was that in a particular case Government may decide that bonus is payable and should be paid and may even decide on the quantum, but the insurer concerned may refuse to pay; in such a case, the only remedy open would be to refer that case to a tribunal and get a binding decision of a judicial character on that.

However, despite these arguments, because of the lacuna in the parent Act itself, the Supreme Court dismissed the arguments on behalf of the employees and upheld the appeal of the company and the matter was dismissed.

The basis for my amending Bill arises from the repercussions that this judgment now has had. The effect of this judgment has been that although

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prior to the judgment, in spite of the fact that the Act was in force no complications and difficulties had arisen and the companies had in the normal course been negotiating with their employees and paying them bonuses, and although, as I have just stated a little earlier, the mind of the Government of India which was expressed in the circular of the Controller of Insurance himself showed that they were not averse to companies paying bonus even up to the extent of two months' salary per year, yet, after this judgment of the Supreme Court has been delivered, I believe, on 7th December, 1960, immediately after this, we find a marked change in the attitude of these general insurance companies towards their employees' claims for bonus. And subsequently, it was found that even companies which had been negotiating with their employees and had come to bonus settlements year after year, began to refuse to sign any type of bonus agreement, and in fact, the non-payment of bonus has now in many companies become almost a form of punishment of the employees, and constant harassment of employees is carried on on this basis and this judgment is cited every time.

The other aspect which I wish to bring to the notice of Government is this that the employees of these general insurance companies are workmen within the meaning of the Industrial Disputes Act of 1947. The Industrial Disputes Act defines 'an industrial dispute' in section 2(k) as follows:

"'industrial dispute' means any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or the conditions of labour of any person."

And obviously, the issue of bonus

comes within the scope of the Industrial Disputes Act. The Third Schedule to the Industrial Disputes Act is entitled 'Matters within the jurisdiction of Industrial Tribunals'. Item 5 of this Third Schedule specifically mentions the question of bonus, and relates to bonus, profit-sharing, provident fund and gratuity. That means that under the Industrial Disputes Act, it is laid down that those who are qualified as workmen under this Act have the right to raise an industrial dispute connected with the question of bonus before an industrial tribunal under the Third Schedule to that Act.

In fact, I may also point out that in this very judgment of the Supreme Court, in the case of the Hercules Insurance, the Supreme Court itself observed as follows, and I may quote from the judgment.

"Bonus under the Industrial Disputes Act is not a part of wages. But the right to claim bonus which has been universally recognised by industrial adjudication in cases of employment falling under the said Act has now attained the status of of a legal right".

This is stated by the Supreme Court in this very judgment. A peculiar position has now been reached which is an anomaly or a lacuna or anything you may call it where these employees, who are certainly workmen under the Industrial Disputes Act are now being denied their legal right under that Act because of the fact that this section of the Insurance Act has been interpreted by the Supreme Court to mean that they have no right to go at all in reference to the industrial tribunal.

This question has now created a sort of separate class, as it were, as far as these general insurance workmen are concerned, and they have

been agitating on this question for quite a long time, making several representations to Government, urging upon them that a suitable amendment should be made to the Act, so that they are not debarred from the right of agitating the question of bonus, if necessary, before an industrial tribunal. I find that on the 14th December 1961 the General Insurance Employees' Association was written to by an officer of the Ministry of Labour and Employment in which he says:

"I am directed to say that as the question of the amendment of the Insurance Act in the light of the judgment of the Supreme Court is being considered, it will necessarily take some time for a final decision to be taken".

It seems quite clear that even as long ago as December 1961, the Government had under its consideration the question of making a suitable amendment to the Act. Since then, quite a long time has passed by, but we have heard no more about this amendment.

Therefore, I have brought this Bill forward. I think the hon. Minister will agree that the only question which is at stake here is whether there is an adequate safeguard or not to see that a particular general insurance company whose financial position may not be sound, is not compelled to pay a bonus which it may not be able to bear. My reply to that would be that, that is the very purpose for which the industrial tribunal is constituted. It is for the general insurance company to satisfy the industrial tribunal, which is a judicial body, that it is not in a position to bear the burden of bonus in a particular year for its employees, and it is for the tribunal to go into the merits of the question and decide. There is no justification from any point of view for this matter to be excluded from the purview of a judicial body like a tribunal and to be left entirely at

the discretion of the executive which is what is the effect in fact of section 31A. Therefore I am proposing my two amendments which are simple. I am sure the hon. Minister has paid some attention to them. My first amendment reads:

"In sub-section (1) of section 31A of the Insurance Act..... in item (vii) of the proviso to clause (c), the following words shall be omitted, namely:—

'such bonus, in the case of any employee, not exceeding in amount the equivalent of his salary for a period which, in the opinion of the Central Government, is reasonable having regard to the circumstances of the case'."

After this omission, the proviso would read as follows:

"Provided that nothing in this sub-section shall prohibit the payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration...."

So that a general provision is there that the payment of bonus is not ruled out. Whether in a particular year in the case of a particular concern a particular quantum of bonus is actually justified or not is a matter which should be left in the normal course to decision by a judicial tribunal, in this case by the industrial tribunal.

My second amendment is to section 40C which imposes some limitations on the expenses of management in the general insurance business. I wish to make an addition to sub-section (1) of this section. I will just read the section as it is, and then the proposed addition. The section reads:

".....Provided that where an insurer has spent as such expenses in any year an amount in excess of

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the amount permissible under this sub-section, he shall not be deemed to have contravened the provisions of this section, if the excess amount so spent is within such limits as may be fixed in respect of the year by the Controller after consultation with the Executive Committee of the General Insurance Council... by which the actual expenses incurred may exceed the expenses permissible under this sub-section."

I wish to add the following:

"as well as the liability of the insurer to pay remuneration including bonus, amounting to living wages, to his workmen, as defined by the Industrial Disputes Act, 1947,"

These are my amendments. I hope the Minister will consider them sympathetically, because it seems the matter has been under consideration for almost two years now, and I think it is high time we removed the injustice which has been unwittingly perpetuated perhaps due to this lacuna on one category of employees out of the whole body of workers in India who are debarred for no fault of theirs from pressing their claims before an industrial tribunal. This restriction should be removed, and they should be brought in line with the rest of the workmen in the country.

Mr. Deputy-Speaker: Motion moved:

"That the Bill further to amend the Insurance Act, 1938, be taken into consideration."

Shri S. M. Banerjee (Kanpur): I rise to support the amendment brought forward by my hon. friend Shri Indrajit Gupta.

In the Statement of Objects and Reasons he has given an indication why this was necessary. Today all

the Central trade union organisations have unanimously adopted the industrial truce resolution, and we do not want, as trade unionists, that there should be strikes and other disturbances in any industry including the insurance industry.

We have been demanding in this House that general insurance should be nationalised because we were expecting some trouble. We expected that the tripartite agreement would be violated by the employers some day, that they would seek the protection of the Supreme Court and taking advantage of any legal lacuna would deprive the employees of their legitimate bonus or other allowances and emoluments. That has come true as was ably explained by my hon. friend Shri Indrajit Gupta.

After this judgement of the Supreme Court, it will be almost impossible for the employees to ask for an industrial tribunal. Here was a case which was referred to an industrial tribunal, and ultimately the Supreme Court has given the judgement against the interests of the employees. Taking advantage of this, the employers will never sit in future with the representatives of the various trade unions of the general insurance employees. They will never agree to anything. In the Statement of Objects and Reasons, he has written:

"The effect of the judgement of the Supreme Court of India in Civil Appeal No. 531 of 1959 between the Hercules Insurances Co. Ltd., and its workmen, is to deprive the employees of General Insurance Companies of the rights conferred on them by the Industrial Disputes Act, 1947 in respect of raising a trade dispute on the issue of Bonus before a judicial body. The purpose of the present Bill is to remove this anomaly by amending the Insurance Act, 1938, in the light of the Supreme Court judgement."

We know the working of the general insurance business. There is no time; otherwise I would have utilised this opportunity to impress upon the House the immediate need to nationalise it. Now that Government has taken a decision not to nationalise it on various grounds, some known, some unknown, I do not bring this point.

After the adoption of the industrial truce resolution it was expected that all employees, including those in general insurance, will be given the benefit of conciliation, arbitration, voluntary arbitration and adjudication. But if these rights are denied to them, what will be the outcome? Can they go on strike when the country is facing a national crisis? They do not; they will not. Before the nationalisation of life insurance, there were several strikes. After nationalisation, there was only a token strike for one day; after that, it was smooth sailing. Recently, the LIC has entered into an agreement with the employees and it is supposed to be one of the best agreements. But the general insurance employers want to take advantage of this opportunity to deprive the employees. I hope the hon. Minister who should be equally sore about such things, would accept this amendment. Every industry wants to deprive its employees of their legitimate bonus. Previously bonus was considered a reward, but it has now become an integral part of the wages, including allowances. Bonus question will be suppressed by those who control general insurance. I am sorry, Sir, when I am speaking on some important points, the Minister of Parliamentary Affairs who has to keep a particular decorum in this House is talking to the hon. Deputy Minister.

Mr Deputy-Speaker: Order, order. Objection is taken that the Deputy Minister is not hearing.

The Deputy Minister in the Ministry of Finance (Shri B. R. Bhagat): I am listening.

Shri S. M. Banerjee: I am sorry; I never knew that he could listen to both of us and that he has that capacity. Anyhow I hope he will accept this amendment. A serious situation has arisen. The Supreme Court Judgment has far-reaching implications on the general insurance employees. Either the Government should bring forward a Bill on their own or they should accept this Bill. It would be better if this Bill were referred to the Select Committee. But since my hon. friend did not give notice of that, I feel that the Bill may be circulated. Let it be circulated at least. The amendment can be moved even now to that effect, if the hon. Minister agrees. Let public opinion be created and then this Bill can be accepted by this House. I am sure the hon. Minister who has a heart to please the employees as against the interests of the capitalists will kindly accept this measure and safeguard the interests of the toiling insurance workers.

Shri Warior (Trichur): Sir, I would also like to add a few words in support of this Bill which has been brought forward by my hon. friend Shri Indrajit Gupta. There is only one category of workers in whose case a similar instance arose formerly. We came to know that the banking industry also met with a similar situation in 1956 or before that period. The workers of the banking industry at that time were also denied the settlement of the bonus question on some legal ground which the insurance workers are now facing. At that time, the employees of the banking industry in India were so organised that they could bring forward so much pressure upon the Government and the lacuna in the Banking Companies Act was removed and the employees of the banking companies were given a chance to negotiate with their concerned employers to come to some agreement on the bonus question, and then settlements were reached. So, a similar situation has arisen in this case.

[Shri Warior]

The Supreme Court has come down upon the issue and rightly so because the courts always decide upon what is presented before them as written law, and as such the decision might be very correct, and we cannot question the authority of the Supreme Court in coming to such a decision. But it is up to the Government especially in this case, the Labour Department, to have considered it earlier. The Labour Department might have come earlier with such a proposal after considering it, because it does not take so much time after 1961 to consider it, and suggest proposals to remove whatever bottlenecks and legal difficulties there are. They should have come forward, or atleast they should have approached the Finance Ministry under whose jurisdiction these insurance companies come, and they should have effected an amendment to the parent Act so that this difficulty of getting bonus for the employees of the general insurance business could have been removed.

One difficulty in all these questions is that some other extraneous matters always creep in, which are not coming to light, to the notice of the public, and we do not know which are the hands that are pulling down these things from the natural course that they should take. In this general insurance, after nationalising life insurance in this country, we thought that automatically the general insurance also will be nationalised; the more so because life insurance companies had been doing much more work than the general insurance companies. After all, insurance is only another word for banking. In a way, the deposits are mopped up in the form of premia, and these accumulated deposits are invested in the industry.

Shri Sham Lal Saraf (Jammu and Kashmir): General insurance is very complicated.

Shri Warior: It might be complicated in the matter of settlement of issue and disputes. The deposits are from the insured and those amounts are invested in the general insurance by those who control general insurance in their own other businesses. We know all these complications and complexes created by these funds which are mopped up in the form of insurance. What actually is the pull behind, we do not know. Why is the Government fighting shy all this time, after having done so much in the life insurance business? Creditable work has been done by the life insurance companies under the Government. At first there might have been some hesitation on the part of certain people, who thought or who were doubtful whether the life insurance business under the Government would be a success or not. Many prophets predicated at that time that it would be a complete failure, because, in all these respects, the private enterprise had a better say at that time. But now it has been proved that all the funds mopped up by the Government through the life insurance department have been useful in diverting the resources for better purposes in the public sector which otherwise would have been denied to the Government. The private sector never gets hold of these resources and can never give them to the Government as the Government wish. We have seen that.

18 hrs.

Mr. Deputy-Speaker: Will the hon. Member take more time?

Shri Warior: No, Sir, I do not want to take more time. This is a simple thing and I am finishing. The question is, if the Finance Ministry stands in the way, then the Labour Ministry will be impotent in this matter. That is why I lay particular stress that the Finance Ministry must make up its mind to amend clause 31 and such other clauses as are coming in the way, and make it smooth-sailing for the employers and employees in

insurance to come to some settlement
on the bonus question.

18.01 hrs.

Mr. Deputy-Speaker: The discussion will continue on the next day for Private Members' Bills. The House stand adjourned till 11 A.M. tomorrow.

*The Lok Sabha then adjourned till
Eleven of the Clock on Saturday,
April 20, 1963; Chitra 30, 1885 (Saka).*
