



2025 INSC 516

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2025
(@ SLP(C) NOS. 21558-21559 OF 2018)

SHEELA DEVI & ANR.

APPELLANT (S)

VERSUS

ORIENTAL INSURANCE COMPANY
LIMITED & ANR.

RESPONDENT (S)

J U D G M E N T

J.K. MAHESHWARI, J.

- 1) Leave granted.
- 2) Assailing the impugned orders dated 26.12.2017 & 28.03.2018 of the High Court of Himachal Pradesh at Shimla in F.A.O. No. 516 of 2017 & C.R.P. No. 13 of 2018 the present appeals have been filed by the Claimants.
- 3) In an employees' compensation claim filed by the parents of the deceased employee because of untimely death of their 24-year-old son due to motor accident during the course of employment with Respondent No.

2 - Employer, the Employees Compensation Commissioner, vide its order dated 05.08.2016 had awarded compensation of Rs. 6,55,410/- along with interest @ 12% p.a. from the date of filing of the claim petition till realization and in addition statutory penalty under Section 4A(3)(b) of the Employees' Compensation Act, 1923 (for short "**Act**") amounting to 50% of the award (Rs. 3,27,705/-). The Commissioner fixed the liability to pay the entire amount upon the Respondent No. 1 - Insurer.

4) Challenging the order dated 05.08.2016, the Respondent No. 1 - Insurer filed F.A.O. No. 516/2017. By passing the impugned order, the High Court has reduced the compensation amount to Rs. 4,36,940/- along with interest @ 12% p.a. from the date of elapsing of one month from the accident and reduced the statutory penalty to Rs. 30,000/-. Additionally, the High Court fixed the liability to pay the statutory penalty amount solely upon the Respondent No. 2 - Employer.

5) In the present appeals, the Appellants -

Claimants are not challenging the reduction of the compensation amount, rather they are aggrieved by the reduction of the penalty from 50% of the award to a fixed amount of Rs. 30,000/-.

6) The Appellants have submitted that the entire amount as awarded by the Commissioner had already been paid, and the award had been executed to finality by the Respondent No. 2 - Insurer, which had paid the amount to the Appellants prior to filing of the appeal before the High Court. As such, it is submitted that at this stage, recovery of the difference between the amount as awarded by the Commissioner and the reduced amount awarded by the High Court should not be directed from the Appellants. It is also argued that the first appeal was disposed of by the High Court at the pre-admission stage without granting an opportunity to the Appellants to file a counter affidavit.

7) Respondent No. 1 - Insurer has submitted that the statutory penalty amount under Section 4A of the Act is discretionary in nature and therefore the reduction of the amount of penalty by the High Court

requires no interference from this Court. Relying upon the judgement of this Court in ***Ved Prakash Garg Vs. Premi Devi and Ors.*** (1997) 8 SCC 1, it has been argued by the Insurer that the liability for payment of penalty amount has rightly been fixed by the High Court on the Respondent No. 2 - Employer.

8) Similarly, Respondent No. 2 - Employer has also argued that the statutory penalty amount is discretionary in nature, and its reduction by the High Court in exercise of discretion warrants no interference by this Court.

9) Heard the learned counsel for the parties and perused the material available on record.

10) It is a settled law that the statutory penalty which is imposed upon the employer under Section 4A(3) (b) of the Act is not to be indemnified by the Insurer. In ***Ved Prakash Garg*** (Supra), this Court has held that the Insurance Company shall compensate the Insured-Employer for the principal amount of compensation as well as interest thereon, however, in case any additional amount of compensation is

awarded by the Commissioner by way of penalty, the same would be the liability of the insured-employer alone and not of the insurance company. The decision in ***Ved Prakash Garg*** (Supra) has been followed in ***L.R. Ferro Alloys Ltd. v. Mahavir Mahto***, (2002) 9 SCC 450 holding that the Insurer is liable to indemnify the owner only for the compensation along with interest thereon and not the penalty imposed on the employer for default in payment of amount within one month from the date of incident. In view of the above, the direction of the High Court, fixing the liability to pay statutory penalty on the Employer only, requires no interference from this Court.

11) The only question which remains for our consideration, therefore, is whether the High Court was justified in interfering with the penalty amount directed by the Commissioner to be 50% of the award amount under Section 4A(3) (b) of the Act and reducing it to a fixed amount of Rs. 30,000/-.

12) For us in order to answer this question, Section 4A of the Act is relevant and is reproduced hereunder

for ready referral:

"4A. Compensation to be paid when due and penalty for default. -

- (1) Compensation under section 4 shall be paid as soon as it falls due.
- (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.
- (3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-
 - a. direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher, rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, on the amount due; and
 - b. if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation. - For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.
- (3A) The interest and the penalty payable under sub-section (3) shall be paid to the employee or his dependant, as the case may be."

13) It is clear from reading Section 4A(3) (b) that in case where the Employer has defaulted in payment of compensation due under the Act within one month from the date it fell due and the Commissioner is of the opinion that there is no justification for the delay, the employer shall be directed to pay a further sum to the maximum of 50% of the award amount, by way of penalty. Therefore, the necessary pre-requisite for imposing the statutory penalty under Section 4A(3) (b) is that the employer must default in payment of compensation due and the Commissioner must reach the conclusion that the non-payment is not justifiable.

14) From a bare perusal of the impugned order, it can be observed that the High Court has not given any reason as to why the penalty amount as directed by the Commissioner was directed to be reduced to a lumpsum amount of Rs. 30,000/-. The Commissioner had come to a specific finding of fact that the Respondent No. 2 - Employer had not paid any amount to the Claimants at the time of injury nor had paid anything when the claim was filed by the Appellants.

Such a finding of fact by the Commissioner could not have been interfered with by the High Court in the First Appeal without a finding to the contrary that the Respondent No. 2 - Employer had indeed paid at least some amount due to the family of the deceased employee within a period of one month from the date of accident.

15) In view of the above, and in the peculiar facts and circumstances of this case, in order to meet the ends of justice, we direct that the statutory penalty under Section 4A(3) (b) of the Act shall be fixed at 30% of the compensation amount. The order of the High Court is modified to that extent without disturbing the finding of the High Court on the compensation and interest thereon awarded under Section 4A(3) (a) of the Act as well as the fixation of liability to pay the penalty amount on the Respondent No. 2 - Employer. In the present case, since the compensation amount as per the Commissioner's award of Rs. 6,55,410/- has been reduced to Rs. 4,36,940/- by the High Court, 30% penalty thereon shall amount to Rs. 1,31,082/- for which the Respondent No. 2 - Employer

alone shall be liable to pay.

16) In the interest of justice, the entire amount receivable by the Appellants shall be paid by the Respondent No. 1 - Insurer who shall recover the penalty amount of Rs. 1,31,082 from the Respondent No. 2 - Employer.

17) Since the quantification of the award passed by the High Court has not been assailed by the appellants and the award passed by the Commissioner has been satisfied including the amount of penalty of 50% by the insurer, therefore, the excess amount of award as well as the penalty is required to be repaid by the appellants also.

18) In view of the discussions made in para 16 & 17 above, these appeals are allowed in part and disposed of with the following directions: -

(i) In terms of para 16, the Insurer shall recover Rs. 1,31,082/- from the Respondent No. 2 - Employer;

(ii) In terms of para 17, the Insurer shall recover Rs. 4,15,093/- being excess

compensation and penalty from the
Appellants;

(iii) The Respondent No. 1 - Insurer is at liberty
to take recourse of law as permissible.

19) Pending applications, if any, shall be disposed
of.

....., J.
[J.K. MAHESHWARI]

....., J.
[ARAVIND KUMAR]

New Delhi;
April 17, 2025.