

---

**(2008) 09 GUJ CK 0084**  
**In the Gujarat High Court**  
**Case No : First Appeal No. 3626 of 2007**

New India Assurance Co. Ltd.

APPELLANT

Vs

Tejabhai Savabhai Dangar and Another

RESPONDENT

---

**Date of Decision :** 16-09-2008

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 3, 4A(3)

**Citation :** (2008) 119 FLR 1112

**Hon'ble Judges :** K. S. Jhaveri, J

**Bench :** Single Bench

**Advocate :** K.V. Gadhia, for the Appellant; Sandeep N. Bhatt, for the Respondent

---

## Judgement

K.S. Jhaveri, J.—The New India Assurance Company Limited has filed this appeal against the Judgment and award dated 9.2.2007, passed by Workmen Compensation Commissioner, Labour Court, Kutch, in W.C.N.F. No. 21 of 1999. By the impugned judgment the learned Judge has passed an award of compensation of Rs. 2,21,004/- and also interest from 28.8.1999 at 12% interest and also penalty of Rs. 1,10,502/-. He has also directed the Insurance Company to pay Rs. 50,000/- medical expenses.

The original claimant Tejabhai Savabhai Dangar was working with the present respondent No. 2 as driver. When he was driving truck insured with the appellant and returning from Vadodara, met with an accident due to brake fail as a result of which he sustained injuries and had to take medical treatment. Thereafter he filed the aforesaid claim petition wherein the learned Commissioner has passed award of compensation as stated hereinabove.

2. As a result of hearing and perusal of the record, the only question to be decided in this appeal is whether the appellant Insurance company is liable to pay the amount of penalty imposed on the insured employer. This issue is squarely covered by the decision of the Apex Court, in the case of Ved Prakash Garg v. Premi Devi and Ors. 1997 (77) FLR 637 (SC), reported in wherein it is

held as under:

On the aforesaid interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner, Sections 3 and 4-A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by Section 4-A(3)(b) is concerned as that is on account of personal fault of the insurer not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner.

3. Thus, the Insurance Company cannot be made liable for the penalty imposed by the Commissioner. Even the Insurance Company cannot be saddled with the award of medical expenses. The aforesaid contention of the petitioner is, therefore, required to be accepted.

4. In the premises aforesaid, it is hold that the appellant Insurance Company is not liable to make good of the penalty and medical expenses awarded by the learned Workmen Compensation Commissioner, Labour Court, Kutch, in W.C.N.F. No. 21 of 1999. The award is modified to the aforesaid extent. If the amount is deposited by the Insurance Company, the amount of penalty and medical expenses shall be returned to the appellant Insurance Company. It will be open to the claimant to recover the said amount from the employer. Appeal is allowed to the aforesaid extent.