

(2022) 11 SHI CK 0033

In the High Court Of Himachal Pradesh

Case No : First Appeal Order (FAO) No. 4130 Of 2013

New India Assurance Company Ltd

APPELLANT

Vs

Kamla Devi (Since Deceased) Through Lrs. Sh. Nek Ram &
Others

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Workmen's Compensation Act, 1923 — Section 22
Motor Vehicles Act, 1988 — Section 147(1)(b)

Citation : (2022) 11 SHI CK 0033

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : B.M. Chauhan, M.S. Katoch, Vipin Pandit, Sanjeev Bhushan, Rajesh Kumar

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this appeal, the appellant has challenged the order dated 01.03.2013, passed by the Court of learned Commissioner, Employee's Compensation, Solan, District Solan, H.P., in WCA No.51/2 of 2011, titled Smt. Kamla Devi Versus Mrs. Kamlesh Thaur & another, in terms whereof, the claim petition filed by the claimant under Section 22 of the Workman's Compensation Act was allowed by learned Commissioner by awarding an amount of Rs.4,23,580/- with interest @ 12% per annum w.e.f. 12.07.2015, i.e. one month from the date of accident till the deposit of the amount. Learned Commissioner further ordered that the order be complied with by the Insurance Company with which the offending vehicle was insured within one month as from the date of the order, failing which it would liable to pay penalty and interest thereupon.

This appeal was admitted on 16.09.2013 on the following substantial question of law:-

"1. Whether the learned Commissioner exercising the powers of the Employee's Compensation Act, 1923 has wrongly saddled the Insurance Company with penalty in case of their failure to deposit the compensation amount?"

2. Leaned Senior Counsel appearing for the appellant has argued that the order passed by learned Commissioner, in terms whereof, it has been directed that in the event of failure of the Insurance Company complying the directions passed by learned Commissioner within one month as from the date of passing of the order, it will be liable to pay a penalty as also interest, is perverse order and not sustainable in the eyes of law, for the reason that the very factum of interest being levied for non-compliance of the order takes care of the interest of the other party and in these circumstances, the imposition of the penalty also is totally unsustainable and bad in law. Learned Senior Counsel has drawn the attention of the Court to the judgment of Hon'ble Supreme Court in Ved Prakash Garg Versus Premi Devi, (1997) 8 Supreme Court Cases 1 and L.R. Ferro Alloys Ltd. Versus Mahavir Mahto and Another, (2002) 9 Supreme Court Cases 450 and by relying upon these judgments, he submitted that imposition of penalty by learned Commissioner on default on the part of the Insurance Company in making good the order within one month is liable to be quashed and set aside as interest of the claimant is duly protected by imposing payment of interest in the event of non-compliance of the order. Accordingly, a prayer has been made that the appeal be allowed and the order passed by leaned Commissioner, to the extent penalty stands imposed upon the Insurance Company in the event of default in compliance of the order within one month as from the date of passing of the order, be set aside.

3. I have heard learned counsel for the parties and have gone through the impugned order as well as the judgments being relied upon by learned Senior Counsel for the appellant.

4. This Court is of the considered view that as from the date when the order was announced by learned Commissioner, the grant of one month's time to the Insurance Company to comply with said order was a prudent direction given by learned Commissioner, as it gave reasonable time to the Insurance Company to comply with the order. The order passed by learned Commissioner to the extent, it has ordered that the Insurance Company would be liable to pay interest in the event of non-compliance of the order within one month from the date of passing of it can also not be faulted with, because once learned Commissioner had passed the order, the Insurance Company was duty bound to comply the same subject to its legal rights. However, once interest stood imposed for non-compliance of the direction, the imposition of the penalty also is not sustainable in the eyes of law. In fact, the scheme of the Act per se does not confers any such power upon learned Commissioner that after passing of the award, in the event of the same not being complied by the Insurance Company, besides levying interest, penalty can also be imposed.

5. Hon'ble Supreme Court in Ved Prakash Garg Versus Premi Devi, (1997) 8

Supreme Court Cases 1, has been pleased to hold that if ultimately the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for delay on the part of insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the delay, then penalty would get imposed on him, i.e. the employer. That would add further a sum upto 50% on the principal amount by way of penalty to be made good by the defaulting employer. Hon'ble Supreme Court further held that so far as this penalty amount is concerned, it cannot be said that it automatically flows from the main liability incurred by the insured employee under the Workmen's Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term 'liability incurred' by the insured employer as contemplated by the proviso to Section 147 (1) (b) of the Motor Vehicles Act as well as by the terms of the Insurance Policy. Hon'ble Supreme Court further held that on the aforesaid interpretation of these two statutory schemes, 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 alongwith interest thereupon, if any, as imposed by learned Commissioner 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 upon the insured employer is concerned, that is on account of personal fault of the insured not backed up by any justifiable cause, the Insurance Company therefore, cannot be made liable to reimburse that part of the penalty amount imposed on the employer.

6. Similarly, in *L.R. Ferro Alloys Ltd. Versus Mahavir Mahto and Another*, (2002) 9 Supreme Court Cases 450, Hon'ble Supreme Court has held as under:-

" 5. The only contention put forth before us is that the entire liability including penalty and interest will have to be reimbursed by the Insurance Company and this aspect has not been examined by the learned single Judge in the High Court and needs examination at our hands. In *Ved Prakash Garg v. Premi Devi and Ors.*, this Court after examining the entire scheme of the Act held that payment of interest and penalty are two distinct liabilities arising under the Act, while liability to pay interest is part and parcel of legal liability to pay compensation upon default of payment of that amount within one month. Therefore, claim for compensation along with interest will have to be made good jointly by the Insurance Company with the insured employer. But, so far as the penalty imposed on the insured employer is on account of his personal fault Insurance Company cannot be made liable to reimburse penalty imposed on the employer. Hence the compensation with interest is payable by the Insurance Company but not penalty. Following the said decision and for the reasons stated therein we modify the order made by the High Court to that extent. The appeal is allowed in part accordingly."

7. Thus, if Hon'ble Supreme Court has laid down the law that even the statutory

“penalty” cannot be shifted upon the Insurance Company, then but natural, default in compliance of the final order passed by learned Commissioner, cannot carry with it any “penalty” and the best course of safeguarding the interest of the claimant is of granting interest upon the said amount in case the amount is not deposited by the Insurance Company within some reasonable time.

8. Therefore, the present appeal succeeds to the extent that order 01.03.2013, passed by the Court of learned Commissioner, Employee’s Compensation, Solan, District Solan, H.P., in WCA No.51/2 of 2011, titled Smt. Kamla Devi Versus Mrs. Kamlesh Thaur & another, is modified by directing that the Insurance Company will be liable to pay only interest if it has failed to comply with the directions passed by learned Commissioner within the time period granted by learned Commissioner and not ‘penalty’. Substantial question of law is answered accordingly.

9. The appeal stands disposed of, so also the pending miscellaneous applications, if any. Interim order, if any, stands vacated.