

(2003) 05 PAT CK 0084
In the Patna High Court
Case No : M.A. No. 79 of 2002

The Divisional Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Naseema Khatoon and Another

RESPONDENT

Date of Decision : 20-05-2003

Acts Referred:

Citation : (2003) 05 PAT CK 0084

Final Decision : Allowed

Judgement

P.K. Deb, J.—This appeal has been preferred against the order dated 8.9.2001 passed in W.C. Case No. 20 of 1995 by the Deputy Labour Commissioner-cum-Commissioner, Muzaffarpur, under the Workmen's Compensation Act whereby and whereunder a penalty of Rs. 41,596/- had been imposed on the Insurance Company for not paying:he amount of compensation within the prescribed period.. Such penalty had been imposed as contemplated u/s 4A of the Workmen's Compensation Act.

2. It appears that the victim was driver and on his death claim was made under the Workmen's Compensation Act by the wife, Respondent No. 1. The vehicle was insured and as such, the Appellant was also a party in the compensation case. After hearing an award of compensation to the tune of Rs. 83,192 was passed. But at that time no interest was imposed. It appears that the Insurance Company also fastened with the liability of compensation but did not pay the amount within the prescribed period. But it was paid after expiry and at that time payment was made with interest @ 12% p.a. and the amount came up to the tune of Rs. 92, 000/- and odd. As the amount of compensation was not paid within the prescribed period then the claimant again filed a petition for imposing penalty on the Insurance Company as contemplated u/s 4A of the Workmen's Compensation Act.

3. It is the submission of the learned Counsel appearing for the Insurance Company that it has been decided by the Apex Court in the case of Ved Prakash Garg Vs. Premi Devi and others, to the effect that the penalty cannot be fastened

with the liability of the Insurance Company. Such penalty can only be imposed on the owner as a primary liability remains with the owner. Previously a judgment was passed by the High Court of Himachal Pradesh imposing liability of penalty on the Insurance Company but the same was reversed in Ved Prakash Garg's case and when such an enunciation of law is there by the Apex Court, the Appellant-Insurance Company filed a review petition before the Commissioner but such petition was rejected and as such, the present appeal has been preferred against the original order. In the original order although no interest has been imposed but by a subsequent order interest with penalty has been imposed on the Insurance Company. When citing Ved Prakash Garg's case the Appellant could not convince the Commissioner then the review petition was rejected. Finding no other alternative the Appellant came up before this Court and filed this present appeal. But in this process there is delay of 101 days in filing the appeal. Limitation petition has been filed u/s 5 of the Limitation Act read with Section 14 of the Act. It is for condoning the delay as they had proceeded with wrong forum before the Commissioner in review. Although it cannot be construed to be a wrong forum because review petition can be filed before the Commissioner. In that view of the matter, on the limitation matter and also on the appeal, notices were sent to both the Respondents. But even after receipt of notice, they preferred not to appear in the appeal.

4. In that view of the matter, imposition of penalty on the Insurance Company is held to be void on the decision of Ved Prakash Garg's case as mentioned above. Hence, the same is hereby set aside on allowance of the appeal. It should be mentioned here that for imposition of penalty, owner can only be held to be liable.