

Before Jawahar Lal Gupta & N.C. Khichi, JJ
NATIONAL INSURANCE CO. LTD.,—*Appellant*

versus

SMT. MAYA DEVI & OTHERS,—*Respondents*

F.A.O. No. 1376 of 1993

27th August, 1998

Workmen's Compensation Act, 1923—S. 4-A, Cl. (3)—Death of employee—Employer liable to pay compensation within one month—Failure to do so invites penalty—Whether Insurance Company liable to pay penalty in case employer fails to pay such compensation within time—Held, if default is of employer penalty not to be imposed on Insurance Company.

Held, that the claim depends upon the interpretation of the provisions of the Workmen's Compensation Act, 1923. Section 4A mandates that the compensation shall be paid "as soon as it falls due". Clause (3) *inter alia* provides that "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 be competent to impose penalty and also award interest. Thus, it is clear that under the statute, the liability to pay the compensation to the claimants is that of the employer. In case there is a default in payment of the compensation, the Commissioner is competent to impose a penalty. Even this penalty has to be paid by the employer. In case where the employer is insured, it may be entitled to be indemnified by the insurer in accordance with the terms of the contract.

(Para 8)

Further held, that the employer had failed to make the payment when it fell due. The authority has, thus, awarded compensation. Since the default is of the employer, the penalty cannot be imposed on the Insurance Company.

(Para 10)

Rameshwar Puri, Advocate,—*for the Appellants.*

M. L. Puri, Advocate,—*for Respondents No. 1 to 4.*

P.K. Mutneja, Advocate,—*for Respondents No. 5.*

JUDGMENT

Jawahar Lal Gupta, J. (Oral)

(1) Is the Insurance Company liable for the payment of penalty in a case where the employer fails to compensate the workman's family for the injury or death ? This is the short question that arises for consideration in this case. A few facts may be noticed.

(2) Dharam Singh was employed with M/s Markanda Textile, Gohana. On 13th October, 1991 a bale of cotton fell on him. He died. His widow and children filed a petition for the award of compensation. They claimed that he was 46 years of age and was drawing a salary of Rs. 904 per mensem. Initially, the employer alone was impleaded as a party. On an objection being raised, even the insurer viz., the National Insurance Company was also impleaded.

(3) After consideration of the matter, the Commissioner found that the claimants were entitled to the payment of Rs. 58,966 by way of compensation. It was further held that there was delay in payment. Consequently, he further imposed a penalty of 40 per cent. Thus, a total compensation of Rs. 82,552.40 Paise was awarded. This amount was held to be payable by this Insurance Company.

(4) Aggrieved by the order of the Commissioner, the Insurance Company has filed the present appeal. This appeal was listed for preliminary hearing before a learned Single Judge. It appears that the counsel for the parties were under a wrong impression that the issue as arising in this case was pending before a Division Bench in Letters Patent Appeal No. 1329 of 1992. Thus, the appeal was ordered to be heard along with the letters patent appeal. Both the cases were listed together. Letters Patent Appeal No. 1329 of 1992 was disposed of by the Bench on 24th August, 1998. Since counsel for this case were not available, this appeal has come up for hearing today.

(5) Counsel for the parties have conceded that the issue arising in this case is totally different from that which fell for consideration in the letters patent appeal. However, in order to avoid further delay, counsel pray that the matter may be heard and decided.

(6) We have heard counsel for the parties.

(7) Mr. Rameshwar Puri, learned counsel for the appellant, has contended that the Commissioner has erred in making the Insurance

Company liable to pay the amount awarded by way of penalty. On behalf of the employer, it has been urged by Mr. P.K. Mutneja that the Insurance Company is liable to indemnify the employer to the full extent and, thus, whatever is payable by the employer should be paid by the Insurance Company.

(8) After considering the contentions of the counsel for the parties, we find that the claim depends upon the interpretation of the provisions of the Workmen's Compensation Act, 1923 (hereinafter referred to as the Act). Section 4A mandates that the compensation shall be paid "as soon as it falls due." Clause (3) *inter alia* provides that "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 be competent to impose penalty and also award interest. Thus, it is clear that under the statute, the liability to pay the compensation to the claimants is that of the employer. In case there is a default in payment of the compensation, the Commissioner is competent to impose a penalty. Even this penalty has to be paid by the employer. In a case where the employer is insured, it may be entitled to be indemnified by the insurer in accordance with the terms of the contract.

(9) What is the position in the present case ?

(10) The employer had failed to make the payment when it fell due. The authority has, thus, awarded compensation. Since the default is of the employer, the penalty cannot be imposed on the Insurance Company. This appears to be the rule as enunciated by their Lordships of the Supreme Court in *Ved Parkash Garg v. Premi Devi and others* (1).

(11) In view of above, the inevitable conclusion is that the authority had erred in holding the insurer liable to pay the amount awarded on account of penalty. The appeal is allowed to that extent. Resultantly, it is held that the appellant was liable to pay the amount of compensation but not the penalty which had been imposed by the Commissioner. We however, clarify that in case the claimants have a right to get interest on the amount of penalty, they will be entitled to seek their remedy before the appropriate forum.

(12) In the circumstances of the above, the parties are left to bear their own costs.

J.S.T.