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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 486/2011 & CM No. 20629/2011 (stay)**

ORIENTAL INSURANCE CO LTD Appellant
Through: **Mr.R.C.Mahajan, Adv.**

versus

SEEMA & ORS Respondents
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

% **ORDER**
16.11.2011

By this appeal filed under Section 30 of the Workmen's Compensation Act, 1923 the appellant seeks to challenge the order dated 05.09.2011 passed by Shri S.C.Yadav, Deputy Labour Commissioner, Labour Department, GNCT of Delhi, Delhi.

Counsel appearing for the appellant submits that learned Deputy Labour Commissioner has committed illegality by holding the appellant/insurance company as liable to pay the amount of 25% penalty. A contention has been raised by the learned counsel for the appellant that it was the liability of the employer to pay the penalty not the insurance company. In support of his arguments learned counsel for the appellant

placed reliance on the judgment of the Apex Court in the case of *Ved Prakash Garg vs Premi Devi & Ors. reported in 1998 ACJ 1.*

I have heard the learned counsel for the appellant.

In the judgment relied upon by the counsel for the appellant the Apex Court clearly observed that penalty amount does not automatically flow from the main liability incurred by the insured employer but it is imposed on account of personal fault of the insured not backed up by any justifiable cause. During the course of arguments learned counsel has not denied the fact that an information was given by the employer to seek grant of compensation in favour of the dependant members of the deceased and therefore clearly the fault was on the part of the appellant, the insurance company not to have paid the compensation amount in favour of the dependant members of the deceased. Once there is a clear fault on the part of the insurance company in committing a default in paying the amount of compensation in favour of the respondent then the insurance company cannot take a plea that the learned Deputy Labour Commissioner ought to have shifted the liability for the penalty amount upon the employer.

The learned Apex Court in the said judgment clearly observed that the liability of penalty would be imposed upon the insurer if there is a personal fault of the insurer and that too for no justifiable cause. The facts in the

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present case are entirely different. Here the appellant/insurance company was at fault in not being paid the timely compensation in favour of the appellant. There is not merit in the present appeal and the same is hereby dismissed.



KAILASH GAMBHIR,J

NOVEMBER 16, 2011
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