

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

MFA.No. 141 of 2013 ()

(AGAINST THE ORDER IN WCC 55/2002 of W.C.C.,
KOTTAYAM, DATED 8.2.2013.)

APPELLANT/ADDL.2ND OPPOSITE PARTY:-

THE ORIENTAL INSURANCE COMPANY LIMITED,
KOTTAYAM, REPRESENTED BY ITS REGIONALMANAGER,
REGIONAL OFFICE, ERNAKULAM NORTH,
KOCHI 18.

BY ADVS.SMT.K.S.SANTHI
SRI.GEORGE CHERIAN (SR.)

RESPONDENTS/APPLICANT & 1ST OPPOSITE PARTY:-

1. R. DAS, S/O.RANGAN, C.R NO 2952,
CARADYGOODY ESTATE, WP DIVISION,
VANDIPERIYAR - PIN 685 533.
2. THE MANAGER,
CARADYGOODY ESTATE,
VANDIPERIYAR - PIN 685 533.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

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M.F.A.(WCC).No.141 of 2013.
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Dated this the 14th day of January, 2015.

J U D G M E N T

The insurer in a proceeding for compensation before the Commissioner for Workmen's Compensation has come up in this appeal challenging the direction to pay to the applicant therein penalty in addition to the compensation.

2. The first respondent filed the application for compensation, alleging that he sustained injuries in an accident arising out of and in the course of his employment under the second respondent on 15.10.2001. The appellant was arrayed in the proceeding as the insurer of the employer.

3. The Tribunal, on a consideration of materials on record, found that the employer is liable to pay compensation and interest to the applicant and accordingly, an order was passed directing the appellant, the insurer of

the employer to deposit the amount determined as compensation, viz., Rs.25,498/- with 12% interest, within thirty days from the date of receipt of the order. It was also directed that if the amount is not deposited within thirty days as directed, the appellant will be liable to pay 30% of the amount determined as compensation as penalty also. It is aggrieved by the said direction to pay penalty, the appellant has come up in this appeal.

4. Though notice was taken out to the respondents, there is no appearance for them.

5. Heard the learned Senior Counsel for the appellant.

6. The learned Senior Counsel for the appellant contended that the order passed by the Commissioner to the extent it directed the insurer to pay penalty provided for under the Act for non-payment of the compensation within the time stipulated is illegal and without jurisdiction. The learned Senior Counsel placed reliance on the decision of the Apex Court in **Ved Prakash Garg v. Premi Devi and**

others (1998 ACJ 1), wherein it was held that no penalty can be imposed on the insurer for non-payment of compensation within the time stipulated. Paragraph 19 of the judgment is reads as follows:

“As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of section 3 and section 4-A sub-section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.”

Even otherwise, it is evident from Section 4-A(3)(b) of the Workmen Compensation Act, which confers authority on the Commissioner to impose penalty, that penalty can be imposed only on the employer. In the said circumstances, the appeal is allowed and the impugned order is set aside to

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the extent it directed the insurer to pay penalty for non-payment of compensation within the time stipulated.

Sd/-
P.B.SURESH KUMAR,
(Judge)

Kvs/-

(true copy)

PA TO JUDGE.