

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.4422 of 2002

Date of decision: December 4, 2015

Kamlesh and others

... Appellants

Versus

Gian Chand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Gagandeep Rana, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent No.2.

AMOL RATTAN SINGH, J.

The two issues in the present appeal, arising out of the order of the learned Commissioner under the Employees' Compensation Act, 1923, dated 28.03.2002, are:-

- i) Whether the wages of the deceased employee of respondent no.1 should have been calculated as per the maximum amount prescribed after the amendment in Explanation-II given below Section 4(1)(b) of the Employees' Compensation Act, 1923 (formerly titled as the Workmen's Compensation Act, 1923 and hereinafter to be referred to as the Act); and
- ii) Whether the penalty prescribed under Section 4-A of the

Act, is payable to the appellants and if so, by whom, i.e. by respondent No.1 or by respondent No.2.

2. The facts giving rise to the litigation are that the deceased, Ram Avtar son of Shri Khem Chand, i.e. husband of appellant no.1 and father of appellants no.2 and 3, was working with respondent no.1 as a driver.

On 18.04.2000, while he was driving Jeep bearing Registration No.HR 26-C-6488, owned by respondent no.1, he met with an accident with a tractor in the area of village Wazirpur, District Gurgaon and unfortunately died due to the injuries sustained by him in the said accident.

3. The appellants (appellants no.2 and 3 through their mother, appellant no.1) are stated to have served a notice upon respondent no.1 on 30.05.2000 but no compensation was paid by respondent no.1, leading to filing of an application before the Commissioner under the Act, on 06.10.2000.

4. Though the appellants' own contention initially was that the deceased was working on a monthly salary of Rs.3500/-, respondent no.1 who appeared as AW1 before the Commissioner, stated that, in fact, he was paying a monthly salary of Rs.4500/- to Ram Avtar and that he had duly informed respondent no.2 (the National Insurance Co. Ltd.), with whom the jeep driven by the deceased was insured, of the accident and death of Ram Avtar. He also submitted that he had paid extra premium to the Company, as regards the liability of a driver.

5. It is necessary to notice at this stage itself, that the vehicle was insured under the Motor Vehicles Act, 1988 and though the compensation has been sought under the Workmen's Compensation Act, the claim itself is not disputed by respondent no.2, except as regards the two questions made out at the outset of this judgment.

6. The Commissioner, after considering the evidence led before him, awarded a sum of Rs.2,11,790/-to the appellants, to be paid by respondent no.2, alongwith costs of Rs.2000/- and interest at the rate of 12% per annum, from the date of accident, i.e. 18.04.2000, till the date of the order pronounced by him, i.e. 28.03.2002. He calculated the interest to be Rs.48,985/-, which is not in dispute.

It was further ordered, that if respondent no.2 failed to pay the entire sum as awarded, including interest, within 60 days, further interest at the rate of 15% per annum would be payable, from the date of the order till realisation of the amount awarded.

It is not in dispute that the amount, as awarded, has been paid to the appellants, by respondent no.2.

7. Mr. Rana, learned counsel appearing for the appellants, submitted that, firstly, the Commissioner had erred in calculating the amount awardable to the appellants, inasmuch as he took the maximum amount of monthly wages payable to the deceased, upon which calculation is to be based for granting compensation, to be Rs.2000/-, whereas, at the time of passing of the order of the Commissioner, on 20.08.2002, Explanation-II below Section 4(1)(b) of the Act had been amended w.e.f. 08.12.2000, by The Workmen's Compensation (Amendment) Act, i.e. Act No.46 of 2000. The cap of Rs.2000/- to be taken as the maximum monthly wage was raised to Rs.4000/- per month, by the said amendment. He, therefore, submitted that the amendment having come about during the pendency of the claim proceedings before the Commissioner, the benefit thereof must be given to the family of the deceased.

8. Next, Mr. Rana submitted that the Commissioner had further

erred in not awarding any penalty to the appellants under Section 4-A (3)(b) of the Act, despite the fact that the compensation payable to the appellants was not paid within the time that it became due, i.e. within one month of the date of the accident. This is despite the fact that the Commissioner had awarded interest under Section 4-A (3)(a), for such delay.

9. Mr.Suvir Dewan, learned counsel appearing for the respondent-Insurance Company (Respondent no.2), on the other hand, submitted that as regards calculation of compensation upon a maximum monthly wage of Rs.2000/-, the Commissioner has not erred at all, as it is not the date of the order of the Commissioner, but the date of the accident which is to be considered, in order to calculate compensation in terms of what is stipulated in the Act.

Since, on the date of the accident, i.e. 18.04.2000, Explanation-II below Section 4(1)(b) read to say that where the monthly wages of a workman exceed Rs.2000/-, the compensation is to be calculated on the basis of the fact that such monthly wages were only Rs.2000/-, therefore, the benefit of the amendment which came about w.e.f. 08.12.2000, cannot apply to the case of the appellants.

He further submitted that since, otherwise, the method of calculation itself, as made by the Commissioner, in order to determine compensation, is not disputed, apart from the maximum wage limit, the award given by the Commissioner cannot be faulted, especially as it includes interest also at the rate of 12% per annum, running from the date of the accident.

10. As regards the payment of penalty in terms of Section 4-A(3)(b), Mr. Dewan submitted that firstly, no such issue was framed before the

Commissioner and as such, the appellants cannot raise that issue before this Court, for the first time, in appeal.

In any case, he further submitted that if at all this Court comes to a conclusion that penalty is payable to the appellants, such penalty is not payable by the respondent- Insurance Company but by the employer, i.e. respondent no.1. In respect of this contention, learned counsel relied upon a judgment of the Supreme Court in **Ved Prakash Garg v. Premi Devi** (AIR 1997 SC 3854).

11. In rebuttal, Mr. Rana, learned counsel for the appellants, reiterated his contention on the first issue, i.e. the maximum monthly wage to be taken as Rs.4000/- instead of Rs.2000/-. In this regard, he relied upon a judgment of a co-ordinate Bench of this Court in **Oriental Insurance Company Ltd. v. Jasbir Kaur and others** (2012)(2) SCT 124, wherein it was held, (with regard to a further amendment in the Act in the year 2009 (Act No.45 of 2009), that since the ceiling of Rs.4000/- as monthly wages, for the purpose of calculating compensation, had been completely lifted, vide the said amendment, during the pendency of the lis, the Commissioner can award compensation to the claimant by taking into account the actual salary drawn by the deceased.

With regard to the liability of the Insurance Company to pay penalty under Section 4-A (3)(b) of the Act, Mr. Rana relied upon a Division Bench judgment of the Rajasthan High Court in **United India Insurance Co. Ltd. v. Smt. Roopkanwar and others** (2006) 2 RCR (Civil) 655, wherein it was held that where additional premium is paid by the insured, to the insurer, the liability to pay penalty in terms of Section 4-A, would also be that of the insurer.

As regards the issue of the payment of penalty being first raised only before this Court, in appeal, learned counsel relied upon the judgment of a co-ordinate Bench of this Court, in **Chonto v. Messrs Industrial Cables (India) Ltd., Rajpura** (1992) 2 PLR 6, wherein even though no penalty had been awarded by the Commissioner, this Court had still awarded it to the appellant therein. He also placed reliance on the judgment of a learned Single Judge of the Bombay High Court, in **Sitaram v. The Chief Executive Officer**, 1986 ACJ 301, to the same effect.

12. Despite respondent no.1 having been served with notice of this appeal, he chose not to appear and consequently, he was proceeded against *ex parte*, vide the order of this Court dated 19.08.2015.

13. After having considered the rival arguments and the pleadings before this Court, I am of the opinion that this appeal deserves to be partly allowed, as regards payment of penalty to the appellants. However, as regards the calculation of compensation on the basis of a cap of Rs.4000/- rather than Rs.2000/- as monthly wages, I am not able to agree with the contention of learned counsel for the appellants.

14. Coming first to the payment of penalty under Section 4-A (3)(b) of the Act, the said provision, as it stood before 04.12.2000 (before insertion of sub-section 3-A), is reproduced hereinunder:-

“4-A. Compensation to be paid when due and penalty for default.

- (1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be,

without prejudice to the right of the workman to make any further claim.

(3) 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-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.”

(Emphasis applied)

Thus, as per the aforesaid provision in the Statute, the compensation to be paid to the workman/his legal heirs, as the case may be, is to be paid as soon as it falls due and in case such payment is not made within one month of the date that it fell due, then as per clause (a) of sub-section 3, simple interest at the rate of at least 12% per annum, would become payable by the employer to the workman/his legal heirs.

Further, if there is no justification for delay in payment of the compensation to the workman/his legal heirs, then the employer is also liable to pay a further sum not exceeding 50% of the total compensation due, by way of penalty.

It has been held in **Oriental Insurance Company Ltd. v. Siby George and others** (2012) 12 SCC 540, by the Supreme Court, that the date when compensation falls due is the date of accident itself. Thus, compensation, if not paid within one month thereof, would be delayed compensation.

15. As regards compliance of clause (a) of sub-section 3 of Section 4-A, the Commissioner took care of the same and awarded interest @ 12% per annum from the date of the accident, i.e. the date when the compensation became due to the appellants and directed that interest be paid alongwith the amount of compensation calculated by him (Rs.2,11,790/-), within a period of 60 days from the date of the order, failing which interest would be payable @ 15% per annum after the 60 days' period, which would continue to run uptill the date of realisation of the amount by the appellants.

As already noticed, there is no dispute on that amount having been paid to the appellants.

16. However, the penalty as is payable by the employer, was not ordered to be paid by the Commissioner, which, as per statutory requirement became due to the appellants if there was no justification for non-payment of the compensation due to the appellants, within one month from the date that it became due, i.e. the date of the accident.

A perusal of the impugned order shows that respondent no.1 (the employer of the deceased), himself testified as AW1, that he had given intimation to the Insurance Company regarding the accident. Therefore, he was obviously not contesting the compensation payable to the appellants in any manner, having admitted the fact that the deceased was in his employment and was drawing a salary of Rs.4500/- per month. However,

whether by ignorance of the law or otherwise, he did not make the payment due to the appellants and left it to respondent no.2 to make such payment. That payment was actually not made by respondent no.2 till after the award of the Commissioner, vide the impugned order dated 28.03.2002.

The date of intimation of the occurrence, by respondent no.1 to respondent no.2, however, is not forthcoming by way of any document on record. Yet, in my opinion, there is absolutely no justification for such a delay in payment of compensation to the appellants. More on that would be considered at a later point. First, what is to be determined is whether the penalty is payable by respondent no.2, or it is the liability of respondent no.2.

17. For that it is first necessary to see as to what was held on that issue by the Apex Court, in *Ved Prakashs' case* (supra).

After having discussed the entire law on the subject, their Lordships held as follows:-

“19. 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 alongwith 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.

20. In view of the aforesaid conclusion of ours the present

appeal will have to be partly allowed. The impugned judgments of the High Court will stand confirmed to the extent they exonerate the respondent-insurance companies of the liability to pay the penalty imposed on the insured employers by the Workmen's Commissioner under Section 4-A(3) of the Compensation Act. But the impugned judgments will be set aside to the extent to which they seek to exonerate insurance companies for meeting the claims of interest awarded on the principal compensation amounts by the Workmen's Commissioner on account of default of the insured in paying up the compensation amount within the period contemplated by Section 4-A(3) of the Compensation Act. Accordingly it must be held that the respondent-insurance company will be liable to meet the claim of the appellants-insured in Appeals Nos.15698-15699 of 1996 to the extent of Rs.88,548/- in Claim Case No.2 of 1992 with interest thereon at the rate of 6% per annum from the date of accident till the date of payment.”

Therefore, what has been held is that, though the liability to pay interest imposed for delayed payment of compensation, shall transfer to the Insurance Company from the employer, i.e. from the insured to the insurer, however, the liability to pay penalty, will lie upon the employer himself.

18. However, in the context of the present case, it needs to be noticed, that it was contended specifically that additional premium was paid by respondent no.1 to respondent no.2, with regard to any liability arising, as concerns his paid driver.

This Court had, consequently, directed learned counsel appearing for respondent no.2, to place on record the Insurance Policy under which the said respondent had admitted its liability as regards the basic compensation at least, to be paid to the appellants.

The said policy was so placed on record by way of Civil

Miscellaneous No.87710-CII of 2015, by respondent no.2 and notice was duly issued which was accepted in Court on 08.04.2015 by the counsel then appearing for the appellants, Mr. Rajinder Pal. However, inadvertently, it was not ordered that the said Insurance policy, annexed with the aforesaid application, be taken on record. That, however, would make no difference in view of the fact that notice was accepted on behalf of respondent no.2, in Court itself. (Respondent no.1, not having appeared in Court, personally or through Counsel, was eventually proceeded against *ex parte*, as already said).

19. A perusal of the insurance policy shows that it is actually a policy under the Motor Vehicles Act, 1988 and the rules framed thereunder, insuring the vehicle driven by the deceased Ram Avtar (i.e. Mahindra Jeep bearing Registration No.HR 26 C-6488), on the date that he met with the accident. Further, it is seen that additional premium as has been referred to by Mr. Rana, was paid firstly in respect of the personal accident benefits as per Endorsement no.5 of the policy, to the extent of Rs.1,00,000/- for each deceased. The additional premium paid under this head was Rs.450/-. Further, an additional premium of Rs.15/- was also paid on account of legal liability to a paid driver, as per endorsement no.19 of the policy.

The additional premium (of Rs.450/-) paid for personal accident/death benefit, is not relevant to the present dispute, as Endorsement 5 is in respect of accidents to unnamed passengers other than the insured and his paid driver or cleaner. Thus, the deceased being the paid driver of respondent no.1, would not be covered under this endorsement in the policy, which pertains to liability in case of injury etc. to an unnamed passenger.

Coming to endorsement no.19 of the policy, in respect of which an additional premium of Rs.15/- was paid. It reads as follows:-

“I.M.T. 19. Legal Liability to Persons employed in connection with the operation and / or maintenance of Motor Car.

In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the Company shall indemnify the Insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accident Act, 1855 or at Common Law in respect of personal injury to paid driver, cleaner whilst engaged in the service of the insured in such occupation in connection with the Motor Car and will in addition be responsible for all costs and expenses incurred with its written consent.

The premium have been calculated and paid while taking insurance of the Motor Car concerned at the rate of Rs.15/- for driver and/or conductor.

Provided always that:

- (1) This Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurance Company a Policy of Insurance in respect of liability as herein defined for his general employees.
- (2) The insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.
- (3) In the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed. Subject otherwise to the terms exceptions conditions and limitations of this Policy.”

(Emphasis applied)

Thus, as a matter of fact, the additional premium of Rs.15/- was paid to cover the legal liability to be paid in case of injury to the driver, as per endorsement no.19, thereby indemnifying the insured, i.e. respondent no.1,

against his legal liability under the Workmen's Compensation Act, 1923.

20. In view of the fact that though the insurance policy issued by respondent no.2, in favour of respondent no.1, was primarily for coverage of risk and liability under the Motor Vehicles Act, yet Endorsement 19 covers liability incurred under the Act of 1923, it would be useful to see, in detail, as to what was held by their Lordships in *Ved Prakashs' case*, on this issue, of liability to pay penalty under Section 4-A(3)(b) of the Act, where the policy is actually issued under the Motor Vehicles Act, 1988.

The relevant parts of the judgment, on this issue, are reproduced hereinafter:-

“10. xxxxxx xxxxxx xxxxxx It may be mentioned at this stage that learned counsel for the contesting respondent-insurance companies made it clear before us that it is not their contention that the insurance companies which have insured the employers against such risks and claims are not liable to make good the principle amounts of compensation as awarded by the Commissioner to the claimants and that the insurance companies under the contracts of insurance would remain liable to make good the said claims. But their only grievance is against the liability sought to be enforced against them for reimbursing the claims for additional compensation by way of penalty and interest as imposed on the insured employers under Section 4-A(3) of the Compensation Act.

11. We may now turn to the relevant provisions of the Motor Vehicles Act. Reference to these provisions becomes necessary because the workmen concerned suffered personal injuries of fatal nature while they were working on motor vehicles of their employers. If they had suffered from any personal injuries during the course of and arising out of the employment while working in the factory premises of the employers or while

carrying on their service obligations as employees at any other place under the instructions of the employers, the question of interaction of the Compensation Act and the Motor Vehicles Act would not arise and such claims for compensation would have squarely been governed only by the Compensation Act.”

(Emphasis applied by this Court)

Thereafter, after noticing the provisions of Section 147 of the Motor Vehicles Act, 1988, it was observed as follows:-

“A conjoint reading of these provisions in the Insurance Policy shows that the insurance company insured the employer-owners of the Insured motor vehicles against all liabilities arising under the Workmen's Compensation Act for which statutory coverage was required under Section 95 of the Motor Vehicles Act, 1939 which is analogous to Section 147 of the present Motor Vehicles Act noted earlier. Section 149 deals with 'Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks'. The moot question is whether the insurance coverage as available to the insured employer-owners of the motor vehicles in relation to their liabilities under the Workmen's Compensation Act on account of motor accident injuries caused to their workmen would include additional statutory liability foisted on the insured employers under Section 40A(3) of the Compensation Act.

Consideration of the question

13. *The question posted for our consideration is required to be resolved in the light of the aforesaid statutory schemes of the two interacting Acts. It is not in dispute and cannot be disputed that the respondent-insurance companies concerned will be statutorily as well as contractually liable to make good the claims for compensation arising out of the employers' liability computed as per the provisions of the Compensation Act. The short question is whether the phrase 'liability arising under the*

Compensation Act' as employed by the proviso to sub-section (1) of Section 147 of the motor Vehicles Act and as found in proviso to clause (i) of sub-section (1) of Section II of the Insurance Policy, would cover only the principal amount of compensation as computed by the Workmen's Commissioner under the Compensation Act and made payable by the insured employer or whether it could also include interest and penalty as imposed on the insured employer under contingencies contemplated by Section 4-A(3)(a) and (b) of the Compensation Act.”

(Emphasis applied by this Court)

Upon considering the effect of one Act on the other, as regards the liability of the Insurance Company to pay compensation to the workman/his legal heirs, it was held as regards interest, as follows:-

“Consequently such imposition of interest on the principal amount would certainly partake the character of the legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not de hors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer.”

However, as already seen, having held that interest is part of the liability of payment of compensation to the workman/his legal heirs, their

Lordships concluded that same principle would not apply in the case of payment of penalty, if the same is awarded by the Commissioner, having found that there was unjustifiable delay for payment of compensation to the workman/his legal heirs.

Thus, in principle, there would be no room for doubt, in view of the authoritative pronouncement, that as regards the penalty, it is the insured and not the insurer that has to bear the liability of payment to the employee/his legal heirs.

21. Yet, as noticed earlier, Mr. Rana, learned counsel for the appellants, had relied upon the judgment of a Division Bench of the Rajasthan High Court, in *Roopkanwars' case* (supra), to submit that if additional premium is paid to the Insurance Company by the insured employer, then the Insurance Company would still remain liable to pay the penalty also, under Section 4-A (3) of the Act.

It is to be stated here that *Roopkanwars' case*, as adjudicated by a learned Single Judge of the Rajasthan High Court, was brought to their notice and was considered by their Lordships in *Ved Prakashs' case* (supra), and it was held that the said judgment proceeded on its own facts, inasmuch as the Insurance Company had agreed in the light of an endorsement in the policy to cover all liabilities, leading the learned Single Judge to hold that, as such, all liabilities would also include penalty and interest.

Thereafter (after the decision in *Ved Prakashs' case* by the Supreme Court on 25.09.1997), the appeal filed by the Insurance Company in *Roopkanwars' case*, came up before a Division Bench of the Rajasthan High Court, wherein, after noticing what had been held in *Ved Prakashs' case* (supra), it was held that since additional premium to cover the liabilities

under the Workmen's Compensation Act had been paid, the Insurance Company cannot deny its liability to reimburse the penalty amount.

This conclusion was reached by the Division Bench in the light of what was noticed in *Ved Prakashs' case* by the Supreme Court, as regards the judgment of the learned Single Judge of the Rajasthan High Court in *Roopkanwars' case* itself. The said observation of the Supreme Court is as follows:-

*“In the case of **United India Insurance Company Ltd. v. Roop Kanwar** a learned Single Judge of the Rajasthan High Court had to consider a situation where on payment of additional premium the insurance company had agreed in the light of Endorsement No.16 of the policy to cover all liabilities incurred by the insured under Workmen's Compensation Act. In view of this contractual coverage of liability the insurance company in that case was held liable to meet the claim for penalty and interest as imposed upon the insured under Section 4-A(3) of the Compensation Act. This judgment proceeded on its own facts and was concerned with a situation converse to the one as was examined by the Karnataka High Court in **Oriental Insurance Company Ltd. v. Raju**. In the case decided by Karnataka High Court, as seen earlier, there was an express exclusion of such liability of the insurance company. In the aforesaid case decided by the Rajasthan High Court there was an express inclusion of such liability for insurance company which had taken additional premium.”*

(from paragraph 4)

(Emphasis applied by this Court)

Thus, the Supreme Court did not overrule the decision in *Roopkanwars' case*, noticing that where additional premium had been paid, then in terms of the contractual liability incurred under Endorsement 16 of the Insurance Policy in that case, the Insurance Company was liable to pay the

penalty also, in terms of Section 4-A of the Act.

22. In view of the above it had been contended by Mr. B.S.Rana, learned Senior Counsel who had earlier appeared in this case, before this Court, submitting that as additional premium was actually paid by respondent no.1 to respondent no.2, the matter would be squarely covered by the Division Bench judgment in *Roopkanwars' case*, read with aforesaid observation of the Supreme Court in *Ved Prakashs' case*.

Having considered the argument in the light of what is contained in the policy, I would accept the contention of learned Senior Counsel.

23. A reading of endorsement no.19 of the Insurance Company, under which such additional premium was paid, in my opinion, leaves no room for doubt that all liabilities accruing under the Workmen's Compensation Act, would be payable by the Insurance Company, i.e. respondent no.2 and not by respondent no.1.

Other than the fact that the additional premium has been paid in respect of legal liability under the Act, in the present case, the responsibility would rest on respondent no.2 to pay the compensation, immediately after respondent no.1 had informed respondent no.2 of the accident, without any dispute on his (respondent no.1s') liability to pay compensation under the Act. Thus, responsibility of any delay in non-payment of basic compensation, as is to be calculated in terms of Section 5 of the Act, lies primarily upon respondent no.2, who obviously awaited the order of the Commissioner before making any payment whatsoever.

It may also be said that having stepped into the shoes of respondent no.1, respondent no.2 could have taken shelter of Section 4-A(2) of the Act, which states that where the employer does not accept the liability

for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts and shall deposit such payment with the Commissioner or make it to the workman, without prejudice to the right of the workmen to make further claim.

Therefore, having stepped into the shoes of respondent no.1, in respect of paying compensation to the appellants, if the extent of liability was being doubted by respondent no.2, some provisional payment at least, was bound to have been made by it, within one month of having received intimation of the death of the deceased Ram Avtar, leaving the remaining payment to be determined by the Commissioner. Not having done that, and having deprived the appellants of their legal right to receive compensation for two years, it is not possible to accept that respondent no.2 is not liable for payment of penalty also to the appellants.

Undoubtedly, the prime responsibility to ensure that such payment is made on timely basis, lay with respondent no.1 and if the Insurance Company had not made such payment within one month, then he should have ensured that he made such payment and later claimed reimbursement of the same from respondent no.2. That also would flow, in my opinion, from the judgment of the hon'ble Supreme Court in *Ved Prakash's case*.

However, it obviously cannot be lost sight of, that even in that case, their Lordships held that where additional premium had been paid, as in *Roopkanwars' case*, the situation would be different and ratio of the judgment of *Roopkanwars' case* was not overruled by the Supreme Court holding that it turned on its own facts.

Identical facts, exist even in the present case, where additional premium has been paid by respondent no.1 to respondent no.2, in terms of endorsement no.19, which covers liability under the Workmen's Compensation Act.

Hence, in view of the aforesaid discussion, penalty would also be payable in this case, by respondent no.2 itself, to the appellants. It obviously cannot be lost sight of that the appellants belong to a poorer section of society and lost their bread-winner and therefore, needed compensation immediately in terms of the Act, which was not paid to them, as statutorily required, when it fell due, i.e. within one month from the date of the accident.

24. The question then is as to the extent of penalty and the interest payable thereupon, by respondent no.2. Without a doubt, the Commissioner had not framed any specific issue with regard to payment of penalty but had awarded interest under Section 4-A(3)(a). In fact, the 4th issue that he framed was as to whether the appellants herein are entitled to the amount of compensation as claimed, and from whom. Necessarily, the question of payment of penalty would also be covered under the said issue and in any case, would be statutorily payable, if he came to the conclusion that there was an unjustified delay in payment of compensation.

Since the Commissioner did not do so in the impugned order, this Court is, therefore, bound to ensure, having concluded that there was no justification for delayed payment of compensation for two years, that the appellants are paid their compensation, even in the form of penalty, for such delayed payment of compensation to them. Such penalty, as per the statute, is payable upto the extent of 50% of the compensation worked out, i.e. 50% of Rs.2,11,790/-.

It is also stipulated in the proviso to clause (b) of Section 4-A(3), that such penalty shall not be imposed without giving reasonable opportunity to the employer to show cause as to why it should not be imposed. The employer was duly served and appeared before the Commissioner but chose not to appear before this Court and was thus proceeded against *ex parte*. In any case, be that as it may, this Court has also concluded that even the penalty, is to be paid by respondent No.2, in view of both, the fact that delay in payment of compensation equally lies on respondent no.2 and further, because respondent no.1 had indemnified himself even on this score by payment of additional premium.

In view of the fact that the delay in payment of compensation was almost two years, to the appellants who belong to the poorer strata of society, I am of the opinion that the maximum penalty statutorily payable, i.e. 50% of Rs.2,11,790/-, thereby amounting to Rs.1,05,895/-, should be paid to the appellants and it is accordingly so ordered.

25. No interest on the amount of penalty is provided for in Section 4-A(3)(b). However, where payment of penalty is also delayed on account of the Commissioner not having come to any finding on that issue, in my opinion, the appellants cannot be deprived of interest that would accrue to them on account of such non-payment of penalty, even due to non-adjudication at the initial stage.

The fact that interest is not completely barred due to non-payment of penalty, would also flow from the following observation of the Supreme Court in *Ved Prakash's case* (supra):-

“14. xxxxxx xxxxxx xxxxxx

The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with

proportionate interest thereon if imposed by the workmen's Commissioner”

Consequently, interest shall also be paid by respondent no.2 to the appellants, running from the date of the order of the Commissioner, i.e. from 28.03.2002, @ 6% per annum. If the payment of penalty plus interest thereupon is not paid within 60 days from the date of receipt of a certified copy of this order, interest @ 12% per annum would be payable thereafter, till the date that complete payment is made to the appellants.

26. Coming now to the issue of payment of compensation, by capping the monthly wages of deceased Ram Avtar at Rs.4000/- per month rather than Rs.2000/-, as argued by learned counsel for the appellants. This argument, in my opinion, has to be rejected, despite the fact that a co-ordinate Bench has taken a contrary view.

Though, by law of judicial precedent, this Court would otherwise be bound to refer the issue to a larger Bench in view of the difference of opinion with a co-ordinate Bench, however, the learned Judge hearing *Jasbir Kaurs' case* (supra) was not apprised of the judgment of the Supreme Court in *Siby Georges' case* (supra), wherein it has been held that:-

“10. The matter once again came up before this Court when by amendments introduced in the Act by Act 30 of 1995 the amount of compensation and the rate of interest were increased with effect from 15.9.1995. The question arose whether the increased amount of compensation and the rate of interest would apply also to cases in which the accident took place before 15.09.1995. A three-Judge Bench of this Court in Kerla SEB v. Valsala K., answered the question in the negative holding, on the authority of Pratap Narain Singh Deo, that the payment of compensation fell due on the date of the accident. In paras 1, 2

and 3 of the decision this Court observed as follows:- (Valsala K. case, SCC pp. 254-55)

“1. The neat question involved in these special leave petitions is: whether the amendment of Sections 4 and 4-A of the Workmen's Compensation Act, 1923, made by Act 30 of 1995 with effect from 15.09.1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15.09.1995.

2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.

3. A four-Judge Bench of this court in *Pratap Narain Singh Deo v. Srinivas Sabata*, speaking through Shinghal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim.”

Thus, even though the Act is a piece of beneficial legislation, it is to be seen that, conversely had the Act been amended to lower the cap of monthly wages for any reason, such amendment would have only been applied prospectively and could not have been made applicable to a workman/his legal heirs, if the accident had taken place before such amendment. Obviously, the converse would be equally true, unless the legislature consciously incorporated that the benefit of the amendment would

run with retrospective effect. That not being the case, it is not possible to accept that though the accident took place on 18.04.2000 and the amendment came into effect about eight months later, w.e.f. 08.12.2000, the benefit thereof is still applicable to the appellants, on the principle that the lis was still pending on the date of amendment. In this regard, the judgment of the Supreme Court in **Padma Srinivasan v. Premier Insurance Company Limited** (1982) 1 SCC 613 can also be cited, in which, in relation to an amendment made in the Motor Vehicles Act, 1939, it was held that the extent of liability must be determined in terms of the provisions as they stood on the date of occurrence of the accident and not on the date of commencement of the policy or from the date of any amendment made in the Act.

A similar view was also taken by a Full Bench of this Court in **Tek Chand Behal v. Khem Chand** (2008) 1 RCR (Civil) 304 (FB). In that case also, the issue was with regard to the date when the rights of the parties crystallised under the Motor Vehicles Act, 1988. It was held that it would not be on the date when the claim petition was filed but on the date of the accident.

In the opinion of this Court, the same principle would also hold good in the case of any amendment in the Workmen's Compensation Act, 1923 (now known as the Employees' Compensation Act, 1923).

Hence, in view of the judgment of the Supreme Court as also of the Full Bench of this Court, with due respect to the view taken by a co-ordinate Bench, it has to be said that the ratio of the judgment of the co-ordinate Bench, in *Jasbir Kaurs' case*, cannot hold the field.

Consequently, that prayer of the appellants is rejected and it is held that the compensation calculated by the Commissioner, alongwith

interest thereupon, *de hors* the penalty as has been awarded by this Court, was the correct compensation and interest calculated by him, in the impugned order, taking the monthly amount of daily wages to be Rs.2000/-, as per the statutory maximum allowed, on the date of the accident.

27. The appeal is, thus, partly allowed, as regards payment of penalty and interest thereupon, in terms of what has been held in paragraphs 24 and 25 herein above.

The appellants would also be entitled to costs of Rs.5000/-.

December 4, 2015

dinesh/vcgarg

[AMOL RATTAN SINGH]
JUDGE