IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O No. 1165 of 1994
Date of decision:- 12.08.2015

National Insurance Co. Ltd. ...Appellant

Versus

Swaran Lata & others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Neeraj Khanna, Advocate
for the appellant.

RITU BAHRI J.

This appeal is by the insurance company disputing the liability foisted upon it by the Motor Accident Claims Tribunal, Chandigarh (for brevity, the 'MACT'), vide its order dated 28.01.1994 whereby the appellant-Company (for short 'the appellant') was held liable to make the compensation to the tune of Rs.87,400/- along with penalty of 35% of the awarded amount.

The applicants alleged that their son died on 18.05.1989 while performing duties with the respondent-firm. He was working as Driver with the respondent-firm @ Rs1400/- per month including all benefits. The son of the applicants died on 18.05.1989 near Slapper Bridge District Bilaspur while driving truck and her son expired as a result of accident while he was on duty. He was unmarried and the applicants are dependent on the earnings of the deceased. On notice, respondent No. 2-firm filed written statement and denied the relationship of employee and employer and ex parte proceedings were initiated against the Insurance Company.

Parvinder Kumar, a co-worker appeared in the witness box and supported the case of the applicant and deposed that the deceased was working as a Driver on vehicle NO. HNE 932 and at that time he was working as Conductor on the same vehicle. He died as a result of accident on 18.05.1989. Shri Chawla and Bhatia are owners of this vehicle and used to pay the salary.

Gurkirpal Singh Chawla while appearing in the witness box has stated that he is proprietor of M/s Chawla Motors and Truck No. HNE 932 was got insured with the National Insurance Co through Shri Gandhi and necessary cover note was issued. In his cross examination, he stated that he has not brought documents of lease and has not received any intimation with regard to cancellation of Insurance of this vehicle and at the time of accident, the above vehicle stands registered in the name of M/s Chawla Motors.

B.K. Chada Branch Manager, National Insurance Co, Parwanoo appeared on behalf of the Insurance Company and stated the the present case was got investigated and stated that the cover note bearing No. 356049 was issued by their agent Gandhi, who was working with M/s Chawla Motors and this cover note seems to have been issued after the occurrence of the accident.

The learned Tribunal in its order observed that though respondent No. 2 denied the relationship of employer and employee but he admitted the accident and consequential death in his written statement and has contended that the truck was leased to Devinder Singh Bhatia but no evidence has produced in this regard. Thus, it was held that the vehicle was under the operational charge of respondent No. 2 and deceased was admittedly its driver. The objection raised by the Insurance Company that their agent Gandhi colluded with respondent No. 2 and cover note was issued after the accident took place and the deceased did not possess the valid driving licence, however, the Branch Manager of the Insurance Company in his cross examination admitted the issuance of cover note and that no communication was sent regarding cancellation etc of this cover note to respondent No. 2. Hence, the aforesaid award was passed by the tribunal.

Learned counsel for the appellant has not referred to any evidence, which has been misread by the Court below. As far as imposition of penalty of 35% of the awarded amount by the learned tribunal, at this stage, reference can be made to a judgment passed by Hon'ble the Supreme Court in a case of ***Ved Prakash Garg vs. Premi Devi and others, 1998 ACJ 1*** whereby Hon'ble the Supreme Court while examining the provision of Section 4-A(3) (b) of the Workmen's Compensation Act, where an employees received fatal injuries in motor accident arising out of and in the course of their employment, held that no penalty amount automatically flow from the main liability of the insured not backed up by any justifiable cause. In para 17 of the judgment, it has been observed as under:-

> *17. We may now refer to another Division Bench judgment of the Gujrat High Court in the case of Gautam Transport, 1989 ACJ 587 (Gujarat) wherein it is held that the insurance company would not be liable to meet the claim arising out of penalty imposed on the insured employer under Section 4-A(3) of the Compensation Act as the penalty arose on account of clear violation of statutory provisions of the Compensation Act by the employer and that could never be said to have been contemplated by the Insurance Company while offering contractual coverage as the said penalty would be the result of the negligence on the part of the insured. In our view, the said decision is in consonance with the schemes of the Compensation Act and the M.V. Act as discussed earlier. We may in this connection refer to a decision of the High Court of Delhi in the case of Oriental Insurance*

Co. Ltd. v. Hasmat Khatoon, 1989 ACJ 862 (Delhi). A learned Single Judge of the Delhi High Court on the schemes of compensation Act and the M.V Act has taken the view that the liability covered by the statutory coverage of insurance is to make good the claim for compensation and that liability would not include interest and penalty. In our view, the said decision lays down the correct legal position against the insured employer is concerned. But insofar as it holds that even for the claim of interest on the principal amount of compensation, as imposed on the insured, the insurance company would not remain liable, it has to be overruled."

Accordingly, the appeal is dismissed being devoid of any merit. However, a liberty is granted to the appellant to seek reimbursement of penalty of 35% of the awarded amount from M/s Chawla Motors, if so advised.

August 12, 2015 (***RITU BAHRI***)
G Arora ***JUDGE***