**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.1808 of 1994 (O&M)
Date of Decision: July 01, 2015**

National Insurance Co. Ltd. .... Appellant

vs.

Smt. Charanjit Kaur and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.M. Suri, Advocate for the appellant.

Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate for respondent Nos.1 and 2.

None for respondent No.3.

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Kuldip Singh J.

Impugned in the present appeal is the order dated 22.03.1994 passage by the Commissioner under the Workmen's Compensation Act, 1923, Karnal, vide which while reviewing the earlier order dated 31.01.1994, the Insurance Company was ordered to pay the penalty of ₹43,056/- (rupees forty three thousand fifty six only) under Section 4-A(3) of the Workmen's Compensation Act, 1923 (in short 'the Act').

Brief background of the case is that one Balwinder Singh, employee of Baljit Singh (respondent before the Commissioner) died in a motor vehicular accident. The mother of the deceased filed a claim petition before the Commissioner under the Act on 20.01.1993, which was allowed on 31.01.1994.

It comes out that during the initial proceedings that the Insurance Company tendered the insurance policy, which was marked as RW1 showing that it was operative from 07.02.1993 to 06.02.1994. The accident took place on 17.11.1992. As such, it was held that the Insurance Company is not liable to pay the compensation. It was further held that since Baljit Singh, Employer had misrepresented the case, therefore, 50% of the compensation along with interest was imposed as penalty.

After passing of the said order, the application for review was filed by Baljit Singh (respondent No.3 herein) on the ground that the Insurance Company had tendered the wrong policy. In pursuant to the notice issued by the Court, the Insurance Company tendered the correct policy, which was operative on the date of accident. It was held that the policy covers the accident dated 17.11.1992. Consequently, the penalty of 50% along with interest was ordered to be paid by the Insurance Company.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the Insurance Company has argued that the penalty was wrongly imposed upon the Insurance Company. For this purpose, reliance has been placed upon the authority of Hon'ble the Apex Court in case of ***"Ved Prakash Garg vs Premi Devi and others", 1998 ACJ 1,*** wherein Hon'ble the Apex Court examined the liability of the Insurance Company to pay the penalty and interest and observed as under:

> "*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 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.*"

A perusal of the facts of the said case would show that in the normal circumstance, the Insurance Company is liable to pay compensation along with interest but not the penalty part, which is to be paid by the employer. However, the facts of the present case are entirely different. In the present case, the Insurance Company contested the case and produced a wrong policy before the Commissioner to show that the insurance policy was not operative on the date of accident. However, when the review application was filed and correct insurance policy was produced showing that the policy was operative on the date of accident. In this way, there was a willful default on the part of the Insurance Company. Therefore, in these exceptional circumstances, the Commissioner was justified in ordering that the penalty of 50% along with interest shall be paid by the Insurance Company, which misled the Court.

As such, the present appeal is without any merit and the same is accordingly dismissed.

(KULDIP SINGH)
JUDGE

July 01, 2015
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