IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No.206 of 1994 (O&M)
Date of Decision:18.02.2015

United India Insurance Company Ltd.

….Appellant

Versus

Sushil Bala and others

….Respondents

AND

(2) FAO No.380 of 1993 (O&M)

Sushil Bala and others

….Appellants

Versus

Rajinder Singh and another

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Ms. Sonal Datta, Advocate for
Mr. Vikas Mohan Gupta, Advocate for the appellant in
FAO No.206 and for respondent No.2 in FAO No.380.

Mr. P.S. Rana, Advocate for respondents No.1 to 4 in
FAO No.206 and for the appellants in FAO No.380.

NAVITA SINGH, J.

1. In FAO No.206 of 1994, the only challenge made by the appellant Company to the order passed by the Commissioner under the erstwhile Workmen's Compensation Act is on the ground of interest and penalty. It was submitted that interest was not to be paid by the Insurance Company nor was the penalty payable by it. An amount of Rs.20,000/- was given as penalty.

2. So far as the interest is concerned, the law is settled that the Insurance Company would have to pay that where there was valid insurance. Regarding penalty, the liability would be of the employer. The Supreme Court held in Kashibhai Rambhai Patel Vs. Shahabhai Somabhai Parmar 2000 (4) ALL

MR (SC) 592 that the Insurance Company cannot be made liable to pay the penalty whereas liability for interest could be saddled on the Company and the owner. Regarding interest, there are judgments of the Supreme Court that the same would be payable by the Insurance Company but regarding penalty, the consistent view is that the same would be paid by the Insurance Company.

3. The appeal filed by the Insurance Company is, therefore, partly allowed holding that interest shall be paid by the appellant while penalty shall be paid by the employer.

4. In the other appeal i.e. FAO No.380 of 1993 filed by the heirs of the deceased i.e. claimants before the court below, the claim was for enhancement of penalty.

5. Counsel for the appellants argued that penalty was payable to a maximum of 50% of the amount to be calculated under Section 4-A of the Employees' Compensation Act and if there was no cogent reason to reduce the same, penalty should be awarded at the maximum rate.

6. It was contended that the Commissioner, in the impugned order, applied Section 4-A of the Erstwhile Workmen's Compensation Act but granted penalty to the extent of 20% simply stating that there was sufficient ground to impose penalty, without stating as to why maximum amount was not granted.

7. The provision regarding penalty leaves the discretion to the authority passing the order where, in the opinion of that authority, there was no justification for the delay. If the intention of the legislation was that maximum penalty was to be paid in all cases where there was no justification for the delay, the law would have provided so and the words 'not exceeding 50 per cent' would not have been used. In the given facts and circumstances, the Commissioner felt that an

amount of Rs.20,000/- was sufficient to be paid as penalty and for that reason he did not grant it at a higher rate. In the situation as above, as would also be seen from the material on record, it is felt that the discretion was not exercised arbitrarily by the court below and sufficient penalty stood awarded.

8. The appeal i.e. FAO No.380 of 1993 filed by the claimants is dismissed.

(NAVITA SINGH)
JUDGE

18.02.2015
Ishwar

Whether to be referred to reporter: Yes