

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 206 OF 2016
WITH CA/6453/2015 IN FA/206/2016 WITH CA/16275/2015 IN
FA/206/2016

THE NATIONAL INSURANCE COMPANY LTD.
VERSUS
SANJAY MADHAVRAO UGLE AND ANOTHER

...
Advocate for Appellant : Mr. Kadethankar Ajit B.
Advocate for Respondent No.1 : Mr. G.R. Syed
Advocate for Respondent No.2 : Mr. D.M. Shinde

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CORAM : V. K. JADHAV, J.
DATED : 30th MARCH, 2016

PER COURT:-

1. With consent of parties, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 10.12.2014 passed by the Commissioner for Workmen's Compensation and the Judge, Labour Court, Nanded in ECNFA No. 48 of 2012, the respondent insurer preferred this appeal.
3. Brief facts, giving rise to the present appeal, are as under:-
 - a) The claimant was working with employer Rajesh Landge as a driver on his vehicle Tavera on monthly salary of Rs.5000/- with daily allowance. On 1.5.2012, when the

claimant was driving the said vehicle on Basmat to Malegaon road, one Cruiser Jeep dashed against his vehicle and in consequence of which, the claimant has sustained several injuries on various parts of his body, which resulted into permanent disablement. Consequently, the claimant had filed claim petition bearing No. ECNFA No. 48 of 2012 before the Commissioner for grant of compensation against the employer and the insurer of the vehicle.

b) The learned Commissioner by its judgment and award dated 10.12.2014 partly allowed the claim petition and thereby directed the original respondents to pay jointly and severally compensation of Rs.2,80,281/- to the claimant alongwith interest @ 12% p.a. from expiry of one month from the date of accident till its realization and also pay the penalty of 25% to the claimant on amount of compensation. The Commissioner has also directed the respondents to pay jointly and severally an amount of Rs.2,50,000/- towards medical expenses actually incurred by the claimant for his medical treatment. Being aggrieved by the same, original insurer has preferred this first appeal.

4. Learned counsel for the appellant submits that the respondent-

original claimant has not suffered any permanent disablement as such and his earning capacity is not at all affected due to the injuries alleged to have been sustained by him. Learned counsel submits that the learned Commissioner has held that the appellant-insurer jointly and severally liable to pay penalty to the extent of 25% to the claimant on the amount of compensation, however, the appellant insurer is not liable to pay the penalty.

Learned counsel for the appellant, in order to substantiate his submissions, places reliance on the judgment of Supreme court in the case of ***Ved Prakash Garg vs. Premi Devi and others, reported in AIR 1997 SC 3854.***

5. Learned counsel for respondent No.1 original claimant submits that the original claimant is now ready to waive the amount of penalty and he has no objection if the award is modified to that extent. Learned counsel has placed on record the pursis to that effect, which is taken on record and marked "X" for identification.

6. Learned counsel for the respondent No.2 employer submits that the penalty is required to be levied under the provisions of the Act only after issuing show cause notice to the respondent employer. The employer will have a reasonable opportunity to explain the

delay in making payment of compensation. Learned counsel submits that the impugned order, imposing penalty on the employer without issuing any show cause notice, is liable to be quashed and set aside.

Learned counsel for respondent No.2, in order to substantiate his contentions, places reliance on the following judgments:-

- I) Ved Prakash Garg vs. Premi Devi and Ors, reported in AIR 1997 SC 3854;
- II) Udhav Rangnathrao Pawar vs. Sheshrao Ramji Jogdand and Anr, reported in 2009 (5) Bom.C.R. 523
- III) Sri Lalitha Equipments vs. Rameshwar Ragho Chauhan and Ors. reported in 2016 (1) Bom.C.R. 559.

7. Section 4-A of Workmen's Compensation Act (8 of 1923) deals with time for payment of compensation as required to be computed under Section 4 of the said Act. Sub-section (1) of Section 4 mandates that compensation shall be paid as soon as it falls due and sub-section (2) thereof contemplates the situation wherein the employer though accepting his liability to pay compensation to his injured workman disputes the extent of the claim of compensation

and in such a case sub-section (2) enjoins him to make provisional payment based on the extent of accepted liability by depositing it with the Commissioner or to pay it directly to the workman. It is clear that such an obligation of the employer would not arise under Section 4A sub-section (2) if he totally disputes his liability to pay on grounds like the injured person being not his employee or that the accident was caused to him at a time when he was not in the course of employment or that the accident caused to him did not arise out of his employment.

8. In the case in hand, the employer has disputed the liability in toto even by denying the employer-employee relationship. So, once the compensation ascertained under the Act either provisionally under sub-section (2) of Section 4 or on final adjudication by the Commissioner under Section 19, the same would fall due after expiry of one month from the date of adjudication under Section 19 of the said Act. (as held by the Supreme court in the case of Ved Prakash Garg (supra)). The Supreme Court in the case of Ved Prakash Garg (supra) held that the penalty is required to be levied under the said provision after issuing show cause notice to the employer concerned who will have reasonable opportunity to show cause that on account of some justification on his part there is delay in making payment of compensation and thus, he is not liable to pay penalty. It is also held

that if ultimately, the Commissioner after giving reasonable opportunity to the employer to show cause, takes a view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his personal fault, he is held responsible for the delay, then penalty would be imposed on him. It has been further held that so far as penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred by the insured employer under the said Act.

9. In view of the above observations and the observations made by the learned Single Judge of this Court in the case of ***Udhav Rangnathrao Pawar (supra)***, the impugned order directing insurer and the employer to pay jointly and severally penalty of 25% to the claimant on amount of compensation does not survive and the same is liable to be quashed and set aside to that extent. Further, the respondent original claimant since now waived the amount of penalty, no purpose would be served in remanding the matter to the Commissioner for issuing show cause notice to the employer concerned and after giving an opportunity of being heard to the respondent employer, pass appropriate order with regard to the imposition of penalty.

10. So far as the quantum of compensation is concerned, the Commissioner has considered the permanent disablement sustained by the claimant as per the certificate issued by the Medical Board in form B and accordingly held that the earning capacity of the claimant is affected to the extent of permanent disablement of 30% sustained by him. It appears that the learned Commissioner has awarded just and reasonable compensation in accordance with law. No interference is required in this regard. Hence, the following order:-

O R D E R

- I. The first appeal is hereby partly allowed.
- II. Impugned judgment and order to the extent of directing the respondent-insurer and employer to pay penalty of 25% on the amount of compensation is hereby quashed and set aside.
- III The rest of the judgment and award dated 10.12.2014 in ECNFA No. 48 of 2012 stands confirmed.
- IV. In the light of above, the original claimant is permitted to withdraw the amount if deposited by the appellant insurer

before the Commissioner.

V. The appeal is disposed of accordingly.

VI. In view of disposal of first appeal, pending civil applications are also disposed of.

(V. K. JADHAV, J.)

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