

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

FIRST APPEAL NO. 416 OF 2005

The United India Insurance Company Ltd.,
through its Divisional Office,
Divisional Managed, United India Insurance
Company, Aurangabad.

... Appellant

VERSUS

1. Sitaram S/o. Sheshrao Mete,
Age : 48 years, Occu. Agri.
2. Sou. Laxmibai W/o. Sitaram Mete,
Age : 40 years, Occu. Household,
Both R/o. Borgaon (Aarj),
Tq. Sillod, Dist. Aurangabad.
3. Yusuf Khan S/o Mehtabkhan,
Age : Major, Occu. Business,
R/o. Near S.T. Stop, Kiradpura,
Aurangabad.
4. Mohd. Moinuddin S/o. Mohd. Jainuddin,
Age : Major, Occu. Driver,
R/o. Jadhavwadi, Near T. V. Centre,
HUDCO, Aurangabad.
(Appeal is dismissed as against R-4
as per Registrar's order dt. 31.01.2006).

... Respondents

.....
Mr S. V. Kulkarni, Advocate for the appellant
Mr D. K. Dagadkhair, Advocate for respondents No. 1 and 2
Ms A. N. Ansari, Advocate for respondent No. 3
.....

WITH
CIVIL APPLICATION NO. 10792 OF 2017
IN
FIRST APPEAL NO. 416 OF 2005

CIVIL APPLICATION NO. 11977 OF 2017
IN
FIRST APPEAL NO. 416 OF 2005

CORAM : A. M. DHAVALA, J.
DATE : 02ND AUGUST, 2018.

ORAL JUDGMENT :-

1. Heard Shri. S. V. Kulkarni, learned counsel for the appellant – Insurance Company.
2. The substantial question of law raised is, whether the Insurance Company is liable to pay penalty?
3. The respondents have filed cross-objections for enhancement of interest. The substantial question of law is, whether the interest payable would be at the rate of 12% in respect of accident taken place in the year 1999.
4. The order passed by the Commissioner of Workmen's Compensation & Labour Court dt. 17.10.2002 in W.C. (Application) No. 52/1999, is under challenge.
5. Mr S. V. Kulkarni, learned counsel for the appellant – Insurance Company submits that, the liability to pay the penalty cannot be fastened on the Insurance Company and the order to that effect needs to be modified.

6. Learned advocate for respondents-claimants have filed cross-objections claiming that the interest awarded at the rate of 6% is contrary to the provisions of law and it should be at the rate of 12%.

7. The following ruling is relied upon.

Ved Prakash Garg v. Premi Devi and others reported in *AIR 1997 SC 3854*.

8. The judgment referred to above in the case of Ved Prakash (supra) is very clear. The penalty is payable by the owner. On account of default in not paying the amount within one month from the date of accident. The said liability is not covered by the Insurance Policy. The penalty of 50% levied u/s 4A(3)(b) of the Workmen's Compensation Act (now Employees Compensation Act), will have to be borne by the owner alone. Hence, point no. 1 is answered accordingly.

9. It is brought to my notice that, as per Section 4A(3)(a) of Workmen's Compensation Act, the employer is liable to pay simple interest at the rate of 12% p.a. Earlier this rate was 6% but the same was amended on 15.09.1995, and it has been raised to 12% p.a. or at such higher rate not exceeding the maximum lending rate as may be

specified by the Central Government. The Commissioner has discretion to award higher rate of interest over and above 12% but he has no discretion to award interest at the rate below 12%. The accident has taken place on 10.06.1999. The amendment introduced on 15.09.1995 would certainly be applicable to this case. The Commissioner has not taken note of the said amendment. Hence, Point No. 2 is also answered accordingly.

10. Hence, both, the appeal and cross-objections are allowed.

The order of Commissioner of WC is modified as follows:

- (i) The owner and insurer shall pay to the claimants compensation of Rs. 2,21,370/- (Rupees Two Lakhs Twenty One Thousand Three Hundred and Seventy only) along with interest at the rate of 12% p.a. from the date of accident till realization and in addition thereto, the opponent-owner shall pay the penalty at the rate of 50% on the compensation amount to the claimants.
- (ii) The insurance Company and owner shall deposit the deficit amount in the court within one month.
- (iii) The amount already deposited and to be deposited hereinafter by the opponent shall be paid to the claimants.

11. The appeal stands disposed of.

12. Pending Civil Application, if any, stands disposed of.

[A. M. DHAVALA]
JUDGE

Punde