

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.530 OF 2008

JUDGMENT:

Heard Sri A.V.K.S.Prasad, learned Standing Counsel for the appellant, and Smt. D.Radha Rani, learned counsel for respondent Nos.1 and 2.

The present appeal, under Section 30 of Workmen's Compensation Act, 1923 (for short, 'W.C. Act'), is preferred challenging that portion of the order, dated 23.04.2008, in W.C.No.18 of 2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal – I, which relates to award of penalty that may be imposed under Section 4-A (3) of W.C. Act.

Learned Standing counsel, of course, insists only on ground No.5, which relates to burdening the appellant to pay the penalty under Section 4-A (3) of W.C. Act. Learned counsel placed reliance in **Ved Prakash Garg v. Premi Devi**¹, wherein the Honourable Apex Court laid down the law that the question of liability of the Insurance Company to pay penalty does not arise so far as the Insurance Company is concerned, as it cannot be made liable to reimburse the penalty amount imposed on the insured employer under the contingencies contemplated by Section 4-A (3) (b) of the W.C Act, as

¹ (1997) 2 Cur LR 938

the same is on account of personal fault of the insured not backed up by any justifiable cause.

The law laid down by the Honourable Apex Court in **Ved Prakash Garg** (supra 1) was followed by various courts in the subsequent decisions, which are unnecessary to refer to. In such an event, certainly, the order under challenge to the extent of saddling the appellant to pay the penalty under Section 4-A (3) of W.C Act is concerned is liable to be set aside.

Learned counsel for respondents 1 and 2 would submit that respondent Nos.1 and 2 may be permitted to withdraw the amount deposited.

Learned Standing Counsel for the appellant would submit that entire compensation is deposited, except penalty, which issue is under challenge in the present appeal, and 50% of compensation deposited has already been withdrawn by respondent Nos.1 and 2 pursuant to the order passed by this Court.

Hence, the Civil Miscellaneous Appeal is partly allowed setting aside the order under challenge to the extent of saddling the appellant to pay the penalty under Section 4-A (3) of W.C. Act is concerned. Further, respondent Nos.1 and 2 are permitted withdraw the balance amount, except penalty if it is included in the deposited amount, and if

penalty is not included in the deposited amount, the balance amount is permitted to be withdrawn by respondent Nos.1 and 2.

Miscellaneous petitions if any pending in the present appeal stand closed. No order as to costs.

JUSTICE A.SHANKAR NARAYANA

Dt: 11.06.2018

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