

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

469

XOBJC-52-CII of 1997 and
FAO No.887 of 1997
Date of decision: 18.04.2018

National Insurance Co. Ltd.

...Appellant

Vs.

Smt. Anita Devi and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. B.S. Rathee, Advocate
for respondents No. 1 to 3.

Mr. Rishab Lohan, Advocate
for Mr. R.N. Lohan, Advocate
for respondent No. 4.

AJAY TEWARI, J. (ORAL)

This appeal and cross objections have been filed against the award of the Commissioner passed under the Workmen's Compensation Act awarding a sum of ₹ 1,04,923/-for the death of husband of the claimant.

The brief facts are that the deceased was employed as driver with respondent No. 4, when on the fateful day, while driving vehicle he met with an accident, resulting in his death. The compensation having been allowed, the Insurance Company has come up in the appeal while the claimants have filed the cross objections.

The primary contention of counsel for the Insurance Company is that the penalty amount could not have been foisted on the Insurance Company. He has relied upon Supreme Court judgment in case *Ved Prakash Garg Vs. Prami Devi and Others 1998 ACJ 1*.

Counsel for respondent No. 4 is not in a position to lay hand on

the contrary judgments. In these circumstances, it is held that penalty amount was wrongly foisted on the appellant and in fact it had to be paid by respondent No. 4, who has come up with Cross objections.

The case of the claimants is that the penalty amount only to the extent of 20% has been imposed whereas in view of the fact that no compensation was paid to the claimants till the conclusion of the case, there was good justification for imposing the maximum penalty of 50%. Counsel for respondent No. 4 has, however, stated that once respondent No. 4 had insured the vehicle, he cannot be blamed for thinking that whatever had to be paid would be paid by the Insurance Company. As the payment was not paid, he has consequently prayed that the penalty amount 20% is adequate.

In my considered opinion, after taking the facts into consideration, it would be appropriate to enhance the penalty to 35% rather than 20%.

It is made clear that the increased penalty amount and the interest thereon would be the liability of respondent No. 4.

Since the main case is decided, pending civil miscellaneous, if any, shall be disposed of.

April 18, 2018

Poonam (II)

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No