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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No. 7350 of 2010 (O&M)
Date of Decision: 14.03.2018**

Balbir Singh

.... Appellant

Versus

Sulochna and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Vijay Kajla, Advocate for
Mr. Kulwant Singh, Advocate
for the appellant.

Mr. D.P. Gupta, Advocate
for respondent No. 6-National Insurance Company Ltd., Karnal.

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JASWANT SINGH, J. (ORAL)

CM No. 32359-CII of 2010

Present application filed under Section 5 of the Limitation Act, 1963, is for condonation of delay of seven (07) days in filing the appeal.

Being insignificant delay and for the reasons set out in the application, the same is **allowed** and the delay of seven (07) days in filing the appeal is condoned.

MAIN CASE

1. The appellant has filed present appeal under Section 30 of the Workmen's Compensation Act, 1923 (for short the 'Act') seeking quashing of Order dated 28.06.2010 whereby Ld. Commissioner,

Karnal, has granted interest @ 12% upon determined compensation of ₹ 2,45,651/- from the date of filing claim application, as also discharged the Insurance Company from payment of interest.

2. The facts emerging from the pleadings and arguments of counsels are that Subhash Kumar was working as driver with the appellant who met with an accident on 21.03.2006 and died on the spot. The dependents of deceased-Subhash Kumar filed claim before Commissioner under the Act who vide Order dated 02.02.2010 awarded compensation of ₹ 2,45,651/- and further issued Show Cause Notice calling upon the parties as to why they should not be held responsible for payment of penalty and interest. The said notice culminated into impugned order dated 28.06.2010 whereby Ld. Commissioner in addition to penalty @ 30% of compensation, awarded interest @ 12% per annum from the date of filing of claim application. Ld. Commissioner further held that interest and penalty shall be paid by the appellant and not by the Insurance Company. The appellant has filed present appeal seeking quashing of order dated 28.06.2010 on the ground that interest is not payable from the date of filing claim application whereas, it is payable from the date of determination and it is Insurance Company who is liable to pay interest & penalty and not appellant.

3. Mr. Vijay Kajla, Advocate for the appellant strongly placed reliance upon judgment of Hon'ble Supreme Court in the case ***Kamla Chaturvedi versus National Insurance 2009 (1) PLR 354*** in support of

his both the issues/arguments namely (i) Interest is payable from the date of award and not date of application for claim and (ii) It is liability of Insurance Company to pay interest and penalty.

4. Per contra Mr. D.P. Gupta counsel for the respondent No. 6-Insurance Company contended that judgment of ***Kamla Chaturvedi*** (supra) is based upon judgment of Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. versus Mubasir Ahmed and another (2007) 2 SCC 349*** and said judgment has already been disapproved by Hon'ble Supreme Court in the case of ***Oriental Insurance Co. Ltd. versus Siby George 2012 (12) SCC 540***. The counsel for the respondent contended that Insurance Company is not liable to pay interest and penalty because the appellant has failed to send any intimation to the Insurance Company, regarding the alleged incident which he was legally bound to do so. So, Ld. Commissioner has rightly directed the appellant to bear the cost of interest with penalty.

5. Having scrutinized record of the case and hearing arguments of both the counsels, this Court finds that two questions arise for the consideration of this Court namely (i) the date from which interest becomes due and (ii) insurance company or employer is liable to pay interest. Law laid down by Hon'ble Supreme Court, qua due date of interest, in the case of ***Kamala Chaturvedi*** (Supra) has already been disapproved by Hon'ble Supreme Court in the case of ***Siby George*** (Supra) so said judgment does not come to the rescue of the appellant qua quantification of liability of interest. Hon'ble Supreme Court in the

case of ***Siby George*** and thereafter in the case of ***Saberabibi Yakubbhai Shaikh and other versus National Insurance Co. Ltd. and others 2014 (2) SCC 298*** has clearly held that decisions in ***Mubasir Ahmed and Md. Nasir*** do not express correct view and interest is payable from the date of accident.

In view of decisions of Hon'ble Supreme Court in the case of ***Siby George and Saberabibi*** the applicant is entitled to interest from the date of accident whereas Ld. Commissioner has granted interest from the date of filing application, however, dependents of deceased are not in appeal so this Court refrains itself from granting interest from the date of accident. The appellant is at a gainful end as interest has been granted from the date of application whereas interest is payable from the date of accident.

6. The second issue involved is that whether the appellant or Insurance Company is liable to bear cost of interest. Ld. Commissioner vide order dated 02.02.2010 held that Insurance Company is liable to pay compensation amounting to ₹ 2,45,651/- because vehicle was insured. The said finding as per available record has been neither challenged nor disturbed at any subsequent stage. Hon'ble Supreme Court in the case of ***Kamla Chaturvedi*** (supra) relying upon its earlier decision in the case of ***Ved Prakash Garg versus Premi Devi others 1997 (8) SCC 1*** has held that Insurance Company is liable to pay not only principal amount of compensation but also interest thereon, if ordered by the Commissioner to be paid. The Insurance Company is

liable to meet claim for compensation alongwith interest however, liability of penalty rests upon the employer alone. It is apt to mention here that law laid down in the case of ***Ved Prakash Garg*** still holds the field.

In the present case, the counsel for the Insurance Company has failed to show any clause which grants immunity to Insurance Company from its liability of interest. In the absence of any clause in the insurance cover, the Insurance Company is liable to pay interest. This Court in the case of ***United India Insurance Company Ltd. versus Smt. Shankutla Devi and others 2006 (2) RCR (Civil) 320*** relying upon judgment of Hon'ble Supreme Court in the case of ***Ved Prakash Garg*** has taken the similar view.

Respectfully following the decision of Hon'ble Supreme Court in the case of ***Ved Prakash Garg*** (supra) and this Court in the case of ***Shankutla Devi*** (supra), this Court holds that Insurance Company-respondent No. 6 is liable to pay interest in addition to principal amount.

In view of above, the appeal stands **partly allowed** in the aforesaid terms.

March 14, 2018 **(JASWANT SINGH)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*