IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7444 of 2016(O&M)

Date of decision: 14.3.2019

United India Insurance Co. Ltd. …..Appellant

VERSUS

Khurshid Khan and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vinod Chaudhri, Advocate for the appellant.

Mr. Baljinder Singh, Advocate for respondent No.1.

REKHA MITTAL, J.

CM No.25464-CII of 2016

Prayer in this application is for condoning delay of 60 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Mamta Bansal, Deputy Manager, United India Insurance Company Ltd, the application is allowed. Delay of 60 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.7444 of 2016

Challenge in the present appeal has been directed against order dated 11.07.2016 passed by the Commissioner Circle-V, Gurgaon under the Employees' Compensation Act, 1923 (in short 'the Act') whereby compensation has been assessed on account of injuries sustained by respondent No.1 while working as driver on vehicle No.UP-32-EN-7526 of Mehrab Logistics and Aviation Ltd., in the course of employment.

The Commissioner has awarded compensation payable with interest at the rate of 12% per annum from the accident i.e. 14.12.2014. In addition, a sum of Rs.1,99,643/- has been awarded qua penalty by invoking Section 4(A)(b) of the Act and insurance company has been held liable to pay even penalty amount, by taking into consideration judgment of Hon'ble the Supreme Court **Praveenbhai S. Khambhayata Vs. United India Insurance Co. Ltd. and others, 2015(2) RCR (Civil) 114, 2015 ACJ 936**.

Counsel for the appellant-insurance company has challenged the impugned order primarily on two counts. It is argued that the respondent/claimant did not produce any documentary evidence to establish his plea of relationship of employee and employer between the claimant and private respondent, therefore, liability to pay compensation by the respondents before the Commissioner has wrongly been fastened.

Another submission made by counsel is that liability to pay penalty is the obligation of the employer and not that of the insurance company and as such, the order imposing penalty upon the insurance company cannot be allowed to sustain. Counsel would argue that no such ratio of law has been laid down in **Praveenbhai S. Khambhayata's case** (supra) that the insurance company has liability to pay the amount of penalty when examined in the light of relevant provisions of the Act dealing with payment of penalty by the employer.

The plea of the appellant that relationship of employer and employee between the private respondent and claimant has not been established is patently misconceived and liable to be rejected. Mehrab Logistics and Aviation Ltd filed reply and admitted that the claimant was employed at salary of Rs.8,000/- per month besides Rs.100/- as diet allowance per day. Counsel has fairly conceded that no such plea was raised by the insurance company that claim application is the result of collusion between the claimant and alleged employer. In view of clear admission by respondent No.1 therein coupled with that admitted facts need not be proved, it is difficult to accept contention of the appellant that relationship of employee and employer has not been established.

This brings the Court to findings of the Commissioner imposing liability to pay penalty upon the insurance company. I have gone through the judgment in **Praveenbhai S. Khambhayata's case** (supra) but unable to find that any such ratio has been laid down by Hon'ble the Supreme Court that liability to pay penalty can also be imposed upon the insurance company either in view of provisions of the Act or merely because there was an insurance policy taken by the employer under the Motor Vehicles Act, 1988. Even there is no special contract pleaded whereby the insurer has undertaken to indemnify the insured in respect of his liability to pay penalty in consonance with the provisions of the Act. That being so, findings of the Commissioner imposing liability to pay penalty upon the insurance company cannot be allowed to sustain and are accordingly set aside. It is further clarified that liability to pay penalty amount would be discharged by the employer/respondent No.1 therein.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

MARCH 14, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no