

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO-545-1993 (O&M)

Date of Decision: 22.8.2023

The New India Assurance Company Limited

....Appellants

VERSUS

Ajaib Singh and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. Deepak Suri, Advocate,
for the appellant.

Mr. Vipul, Advocate, for
Mr. Ashwani Arora, Advocate,
for respondents No.1 and 2.

KARAMJIT SINGH, J.

This appeal has been filed by the appellant insurance company against order dated 28.1.1993 passed by the Court of learned Commissioner under Workmen's Compensation Act (in short, "Act of 1923") whereby claimants-respondents No.1 and 2 were granted compensation worth ₹ 87,388/- and they were also held entitled to simple interest @ 6% p.a. on the said amount with effect from 9.9.1990 till its realization. The Court also directed that a sum of ₹ 40,000/- may be recovered from the employer and the insurance company by way of penalty.

2. Brief facts of the case are that Lakhbir Singh son of the claimant was working as driver-cum-cleaner with his employer-Mahinder Singh (respondent No.3 herein) and his monthly was salary of ₹ 1500/- along with other benefits; that Lakhbir Singh while driving truck belonging to respondent No.3 met with an accident, as a result of which, he died on 9.9.1990 and report in this regard was lodged with Police Post Khera, Police

Station Sirhind on 10.9.1990. The truck was insured with the appellant insurance company. The parents of the deceased filed application for grant of compensation under Section 10 of Workmen's Compensation Act in the Court of learned Commissioner under the said Act. In the said application, the employer and the insurance company were proceeded against *ex parte*. The Court of learned Commissioner concerned allowed the said application and granted compensation as has been detailed in the opening paragraph of this judgment.

3. The insurance company being aggrieved by the said order, has filed the present appeal.

4. I have heard counsel for the parties.

5. Counsel for the insurance company submits that there is no challenge on behalf of the appellant with regard to award of compensation worth ₹ 87,388/- and the interest component; that, however, the insurance company is aggrieved by the impugned order to the extent whereby it has been directed even to pay penalty of ₹ 40,000/- to the claimants. Counsel for the appellant while referring to the provisions of Section 4A of the Act of 1923 submits that the penalty is to be recovered only from the employer and not from the insurance company. So, prayer is made that the impugned order be modified accordingly and otherwise, recovery rights be given to the appellant insurance company to, firstly, make payment of penalty to the claimants and then to recover the said amount of ₹40,000/- from the employer.

6. Counsel appearing on behalf of respondents No.1 and 2 while supporting the impugned order submits that there is no illegality in the same; that it is settled position of law that the amount of compensation

along with interest is to be paid by the insurance company. It is further submitted that as regards penalty component is concerned, recovery rights can be given to the insurance company to recover penalty so paid by it to the claimants, from the employer.

7. Act of 1923 is a welfare legislation meant to tide over the parents of the deceased workman in financial crisis on account of death of sole bread winner of the family.

8. It is settled position that it is the liability of the insurance company to make payment of amount of compensation along with interest as has been awarded by the learned Commissioner under Act of 1923. As far as the penalty part is concerned, it is the employer who has to pay the penalty. However, taking into consideration the facts and circumstances of the case, the appellant insurance company is directed to pay the penalty of ₹ 40,000/- imposed by the learned Commissioner under Act of 1923 to the claimants and then to recover the said amount of penalty from the employer namely respondent No.3-Mahinder Singh.

9. Present appeal is hereby disposed of with aforesaid modification.

(KARAMJIT SINGH)
JUDGE

August 22, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No