

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO 40/2023

Date of Decision: 24.02.2023

IN THE MATTER OF:

**DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CO-OPERATION**

..... Appellant

Through: Mr. Sumit Sarna, Advocate

Versus

SURAJ MUKHI & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. 7937/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 7936/2023 (delay)

1. By way of the present application filed under Section 5 of the Limitation Act, the appellant seeks condonation of delay of 38 days in filing the appeal.
2. For the reasons stated in the application, the same is allowed and the delay of 38 days in filing the appeal is condoned.
3. The application stands disposed of.

FAO 40/2023

Page 1 of 4

FAO 40/2023 and CM APPL. 7938/2023 (stay)

1. By way of the present appeal filed under Section 30 of the Employee's Compensation Act, 1923 (hereinafter, referred to as the 'EC Act'), the appellant seeks to challenge the order dated 12.05.2022 passed by the learned Commissioner in Case No.CEC/D/02/WD/12/1023 vide which penalty was imposed on the appellant, as well as the order dated 30.09.2022 vide which the review application filed against the order dated 12.05.2022 was dismissed.

2. The only ground raised by the appellant before this Court is that the interest amount having been directed to be paid alongwith the compensation amount, no penalty could have been imposed. The issue stands answered in terms of the mandate of Section 4A(3)(b) of the EC Act as well as the decision of the Supreme Court in Ved Prakash Garg v. Premi Devi & Others reported as (1997) 8 SCC 1. In the captioned case, the Supreme Court has observed as under:-

“14. On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest thereon, if ordered by the Commissioner to be paid by the insured employers. ...But similar consequence will not follow in case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by Section 4-A(3)(b) of the Compensation Act after issuing show-cause notice to the employer concerned who will have reasonable opportunity to show cause why on account of some justification on his part for the delay in payment of the compensation amount he is not liable for this penalty. However, if ultimately, the Commissioner after giving

reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the delay, then the penalty would get imposed on him. That would add a further sum up to 50% on the principal amount by way of penalty to be made good by the defaulting employer. So far as this penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Workmen's Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term "liability incurred" by the insured employer as contemplated by the proviso to Section 147(1)(b) of the Motor Vehicles Act as well as by the terms of the insurance policy found in provisos (b) and (c) to sub-section (1) of Section II thereof. ...But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by Section 4-A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner.

xxx

19. *As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under*

Section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.”

3. It is also borne out from the records that insofar as the order dated 30.11.2015 is concerned, vide which compensation alongwith interest was awarded, the same was challenged before this Court as well as the Supreme Court, which challenges were dismissed.

4. Accordingly, I find no ground to entertain the present appeal. The appeal is dismissed alongwith the pending application. The appellant shall deposit the penalty amount with the learned Commissioner forthwith, who shall release the same to the claimant.

5. A copy of this judgment be communicated to the concerned Commissioner for information.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 24, 2023

na