

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

+ **FAO 48/2021, CM APPL. 4183/2021 (Stay) &
CM APPL. 4185/2021 (Delay)**

Date of Decision: 09.02.2023

IN THE MATTER OF:

AJAY KUMAR GUPTA Appellant

Through: Mr. Aditya Goel, Advocate.

Versus

ANITA AND OTHERS Respondents

Through: Mr. Apoorv Sharma, Advocate for
Mr. Daksh Nain, Advocate for
respondent Nos. 1 to 4.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, the '*EC Act*'), the appellant (respondent below) has assailed order dated 13.03.2019 passed by the learned Commissioner, Employees' Compensation in Case No.WCD/14/ND/2013/1034, whereby penalty to the extent of 35% of the compensation amount has been imposed on him in terms of Section 4-A(3)(b) of the EC Act.

2. The appeal is accompanied by an application under Section 5 of the Limitation Act read with Section 151 CPC seeking condonation of

delay of 328 days, wherein it is averred that the appellant became aware of the passing of the impugned order on 15.12.2020. It is stated that he was not supplied a copy of the impugned order by the learned Commissioner and came to know of its passing only when he was served with a notice by the learned Executive Magistrate directing him to appear on 11.01.2021.

3. Considering the mandate of Section 5 of the Limitation Act, I am of the opinion that the appellant has failed to make out any 'sufficient cause' to explain the delay occasioned in the present case. Be that as it may, as learned counsels appearing for the parties have addressed submissions on merits, I have heard the rival contentions and perused the material on record in entirety. In my considered view, no ground for interference with the impugned order is made out for the reasons discussed hereinafter.

4. Learned counsel for the appellant has submitted that the claim petition was initially disposed of vide order dated 04.07.2016 and while noting the prayer of the respondents/claimants, no penalty amount was awarded.

5. Learned counsel for respondent Nos. 1 to 4, on the other hand, has supported the impugned order and refuted the contentions raised on behalf of the appellant.

6. It is evident from the records that considering the statements made in the claim petition, the same was allowed by the learned Commissioner vide order dated 04.07.2016 and compensation awarded alongwith interest. Thereafter, as per mandate of Section 4-A(3)(b) of the EC Act, a show cause notice was issued to the employer/appellant to show as to

why penalty not be imposed on him. Multiple opportunities were given in this regard, but the appellant failed to put up any defense.

7. Admittedly, the appellant has not challenged order dated 04.07.2016 passed by the learned Commissioner. Rather, during the course of submissions, it has been submitted that the entire compensation amount alongwith interest has been paid.

8. At this stage, reference may profitably be made to the decision of the Supreme Court in Ved Prakash Garg v. Premi Devi & Others reported as **(1997) 8 SCC 1** where it has been observed as follows:-

“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.

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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.”

9. In terms of the decision in Ved Prakash Garg (Supra), the liability to pay penalty amount to the extent of upto 50% of the compensation amount falls on the employer. In the present case, the appellant's contention that the issue of penalty was adjudicated upon by the learned

Commissioner in the initial order is meritless, as in the said order, only a prayer was noted and no amount was awarded towards penalty. In fact, subsequently, requisite notice under Section 4-A(3)(b) of the EC Act was issued and the impugned order came to be passed.

10. Accordingly, I find no ground to interfere. The appeal is dismissed. Interim orders stand vacated. Let the penalty amount deposited by the appellant be released to the claimants forthwith. Pending miscellaneous applications stand disposed of.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 09, 2023

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