

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO No.1778 of 1993
Date of Decision: 09.04.2024

The Oriental Insurance Company Limited
...Appellant

Versus

Rishi Ram & others
...Respondents

CORAM: HON’BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. R.K. Bashamboo, Advocate,
for the appellant-Insurance Company.

Ms. Neha Rana, Advocate, appearing for
Mr. R.N. Lohan, Advocate, for respondent No.1.

*Presence of respondent No.2 for the purpose
of adjudication of the appeal already dispensed
with vide the order dated 12.03.2024.*

* * * *

MEENAKSHI I. MEHTA, J. (ORAL)

Feeling aggrieved and dis-satisfied with the order passed by the Commissioner (for short ‘the Competent Authority’) under the Workmen’s Compensation Act, 1923 (for short ‘the Act’), at Bhiwani, on 10.09.1993, whereby respondent No.1-claimant (here-in-after to be referred as ‘the claimant’) has been awarded a total sum of Rs.45,865/-, consisting of the amounts of compensation and penalty, along-with the interest thereon @ 6% per annum, on account of the injuries suffered by him in an accident and the appellant (here-in-after to be referred as ‘the insurer’) has been saddled with the liability to deposit the above-said amount, it (insurer) has chosen to prefer the instant appeal to lay challenge to the same.

2. Shorn and short of unnecessary details, the facts, as emanating from the perusal of the file and culminating in the filing of the present appeal, are that the claimant filed a Claim Application for seeking compensation from respondent No.2-employer (here-in-after to be referred as 'the employer') and the insurer and averred therein that he had been working with the employer as 'Driver' on the vehicle bearing Registration No.HR-31-3582. On 11.11.1991, when he was coming from Village Ram Rai to Jind while driving the afore-said vehicle, he met with an accident and sustained grievous injuries on his person. The employer and insurer filed their respective written-statements, contesting the claim of the claimant therein on various grounds and then, the parties were put to the trial by framing the issues and after appreciating and evaluating the evidence as adduced by them on the record and hearing their respective counsel, the Competent Authority has allowed the above-referred Claim Application and has granted the compensation to the claimant vide the impugned order, as already discussed in the opening para of this judgment.

3. I have heard learned counsel for the appellant-insurer as well as learned counsel appearing for respondent No.1-claimant in the instant appeal and have also perused the file carefully.

4. The sole contention, as raised by learned counsel for the insurer at the time of addressing the arguments in this appeal, is that the Competent Authority fell in error in fastening the liability to pay the amount of penalty, upon the insurer whereas the same was to be paid by the employer alone. To buttress his contention, he places reliance upon the observations as made by Hon'ble Supreme Court in **Ved Parkash Garg vs. Premi Devi 1997(4) R.C.R. (Civil) 309** to the effect that "*a conjoint reading of the provisions of Section 4-A(3) of the Workmen's Compensation Act, 1923 and Section 147 of the Motor*

Vehicles Act, makes it clear that when the employee suffers from a motor vehicle accident injury while on duty on the vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along-with interest thereon under Section 4-A(3)(a), has to be paid by the insurer but so far as the amount of penalty imposed under Section 4-A(3)(b) is concerned, as that is on account of personal fault of the insured not backed by any justifiable cause, the insurer cannot be made liable to reimburse that part of the penalty amount imposed upon the employer and it has to be paid by the employer himself.”

5. As mentioned earlier, the Competent Authority has directed the insurer to deposit the sum of penalty, besides the amount of compensation along-with interest thereon, vide the impugned order. However, in the light of the afore-quoted observations, made by the Apex Court in **Ved Parkash Garg (supra)**, it becomes crystal clear that the amount of compensation and the interest granted thereon, is to be paid by the insurer whereas the amount of penalty would be payable by the employer himself.

6. As a sequel to the fore-going discussion, the appeal in hand is, hereby, allowed to the extent that the appellant-insurer is exonerated from its liability to pay the amount of penalty, as imposed by the Competent Authority and rather, the employer himself would be liable to deposit/pay the same.

09.04.2024
seema

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes