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

\+ FAO 57/2020

M/S OKARA ROADWAYS REGD .....Appellant

Through: Mr. Mukul Rawal, Mr. Mahee Arora and Mr. Tehzibur Rehman, Advs.

versus

M/S ORIENTAL INSURANCE CO LTD & ORS .....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **13.05.2025**

1. This hearing is being conducted through hybrid mode.

CM APPL. 4436/2020 – DELAY OF 418 DAYS IN FILING

2. This is an application filed on behalf of the appellant seeking condonation of delay of 418 days in filing the appeal.

3. For the reasons stated in the application, the same is allowed and the delay is condoned.

4. Application stands disposed of accordingly.

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5. No one has appeared for respondent No. 1/Insurance Company as well as for respondents No. 2 to 4, who are the claimants being the parents and widow of the deceased/Sandeep Kumar.

6. Having heard the learned counsel for the appellant/registered owner/insured on the present appeal preferred under Section 30 of the Employee's Compensation Act, 1923 [hereinafter referred as the "**EC Act**"] assailing the impugned judgment-cum-award dated 24.09.2018, and on a perusal of the record, this Court proceeds to decide the present appeal.

7. In brief, it is established from the record that the deceased/Sandeep Kumar, aged about 22 years, was employed as a 'Second Driver' with the appellant/registered owner/insured and he sustained fatal injuries in a motor accident on 29.01.2018.

8. The learned Commissioner has given a categorical finding that the deceased/Sandeep Kumar was working as an employee with the appellant/registered owner/insured and he died during the course of and arising out of employment.

9. It is also borne out from the record that the respondents No.2 to 4/claimants have been awarded a total compensation of Rs.8,47,160/- with interest @ 12% p.a. with effect from 01.03.2018 till realization.

10. The main grievance of the appellant is with regard to the imposition of penalty of Rs.84,716/- upon it by the learned Commissioner in terms of Section 4A(3)(b) of the EC Act[1].

11. Learned counsel for the appellant has alluded to the policy of insurance, which is placed on the record *vide* Annexure 'P' which was valid from 21.08.2017 till midnight of 20.08.2018.

12. Evidently, the ill-fated truck was insured for third party risk and it is also brought to the fore that additional premium had been paid by the appellant/registered owner/insured, amounting to Rs.150/- covering legal liability to be paid to a driver/conductor/cleaner-IMT 40.

13. At the outset, the impugned judgment-cum-award dated 24.09.2018 insofar as the compensation towards penalty has been

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[1] 4A(3)(b)- if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent, of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

imposed upon the appellant/registered owner/insured, cannot be sustained in law.

14. Learned counsel for the appellant has invited the attention of this Court to an earlier decision by this Court in **M/s Okara Roadways Regd vs. M/s Oriental Insurance Co. Ltd. & Ors.**[2] *vide* order dated 06.05.2025, whereby this Court referred to an earlier decision passed in **The Oriental Insurance Co. Ltd. vs. Smt. Kamla Devi**[3] dated 25.03.2025, whereby it was held as under:-

> "6. In the present appeal, which was admitted for hearing on 24.03.2022, the only issue that was canvassed for consideration was whether the appellant/insurance company can be held liable to pay the penalty amount under Section 4 A (3) of the Act.
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> 7. The aforesaid position in law was examined by the Supreme Court in the case of **Ved Prakash Garg v. Premi Devi**[4], wherein although it was held that the liability to pay a penalty under Section 4(A)(3)(b) of the Act cannot be fastened upon the insurance company, however, in the aforesaid judgment, a decision by the Rajasthan High Court was discussed titled as **United India Insurance Company Ltd. v. Roop Kanwar And Ors.**[5], wherein it was held that if an additional premium has been paid by the employer/insurer to cover compensation under the Workmen's Compensation Act, 1923 the liability to pay the penalty under Section 4(A)(3)(b) of the Act shall also be borne by the insurer.
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> 8. In the present case, the insurance policy on the record *ex facie* shows that apart from the basic third-party insurance totalling Rs. 14,974/-; an additional premium was paid by the owner/employer i.e. Rs.100/-besides the legal liability (LL) to employees @ Rs. 150/-. Since an additional premium was paid by the employer/respondent No.4, the impugned judgment dated 29.11.2021, insofar as it imposes the liability for payment of compensation towards the penalty under Section 4(A)(3)(b) of the Act, upon the shoulders of the appellant/ Insurance Company cannot be interfered with."

15. The crux of the matter is that since the additional premium had been paid by the appellant/registered owner/insured to the respondent

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[2] FAO 350/2019

[3] FAO 76/2022

[4] 1997(8) SCC 1

[5] 2006 (2) TAC 973

No. 1/Insurance Company, the liability to pay compensation towards penalty under Section 4A(3)(b) of the EC Act also has to be fastened upon the respondent No. 1/Insurance Company.

16. Accordingly, the present appeal is allowed.

17. The impugned order dated 24.09.2018 is hereby set aside to the extent the penalty under Section 4A(3)(b) of the EC Act has been imposed upon the appellant/registered owner/insured.

18. The said amount of penalty shall be payable by the respondent No. 1/Insurance Company.

19. Since the amount of penalty has already been paid/released to the respondents No. 2 to 4/claimants, it is directed that the respondent No.1/Insurance Company shall reimburse the entire amount of penalty to the appellant within eight weeks from today, failing which it shall be liable to pay the said amount with interest at the rate of 6% per annum to the appellant from the date of this order till realization.

20. The present appeal stands disposed of accordingly. Pending applications also stand disposed of.

DHARMESH SHARMA, J.

MAY 13, 2025/*gunn/Es*