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

\+ FAO 204/2021 & CM APPL. 28277/2021 – STAY

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. .....Appellant

Through: Mr. Danish Aftab Chowdhury & Mr. Suhail Malik, Advs.

versus

MR. GURMAIL SINGH@ GURMER@ GURNAL SINGH & ANR. .....Respondents

Through: Mr. R K Nain, Ms. Pratima N Lakra & Mr. Chandan Prajapati, Advs. for R1.
Ms. Rishika Jain & Ms. Mannat Kohli, Advs. for R2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **02.04.2025**

1. Having heard the learned counsels for the parties present and on perusal of the record, this Court proceeds to decide the present appeal preferred by the appellant/insurance company, assailing the impugned order dated 11.03.2021 passed by the learned Commissioner, Employees' Compensation, whereby the application moved by respondent No.1/workman seeking penalty under Section 4A(3)(b) of the Employees' Compensation Act, 1923[1] was allowed and the liability to pay the same has been fastened upon the appellant/insurance company.

2. Shorn off unnecessary details, respondent No.1/claimant filed a claim petition under the E.C. Act seeking compensation for the injuries sustained in accident that occurred on 12.05.2008. It was the case of the respondent No.1/claimant that he was deputed as a second

[1] E.C. Act

driver on truck bearing No. HR-38M-7333 owned by respondent No.2 and the same was insured during the relevant time *vide* policy of insurance dated 09.06.2007 with the appellant/insurance company.

3. Suffice to state that the learned Commissioner, Employees' Compensation found that there was existing a relationship of employer and employee between the claimant and registered owner of the aforesaid vehicle *viz* respondent no. 2. Thus, assuming his monthly wages to be Rs. 6,000/- per month + Rs. 100 per day as food allowance, the compensation was reckoned at minimum wages of Rs. 4,000/- per month and considering that the claimant/injured was 32 years of age, compensation of Rs. 5,00,400/- was awarded with interest @ 12% p.a. from the date of accident till its realization.

4. It is borne out from the record that an appeal was preferred by the appellant/insurance company assailing the impugned order dated 14.05.2012 passed by the learned Commissioner, Employees' Compensation in FAO No. 330/2012 and learned Single Judge of this Court *vide* order dated 15.05.2014 set-aside the aforesaid order primarily on the ground that the respondent No.1/claimant was not having a valid driving licence, which aspect was not considered by the learned Commissioner, Employees' Compensation. Accordingly, it was directed that 50% of the amount of compensation which had already been disbursed to respondent No.1/claimant may be recovered by the appellant/insurance company from him and the balance amount of 50% towards the compensation lying with the learned Commissioner, Employees' Compensation be returned back to the appellant along with accrued interest, thereon.

5. The aforesaid order was assailed by the respondent No.1/claimant in Civil Appeal No. 12065/2018 and the Supreme

Court *vide* order dated 13.12.2018 passed the following directions:

> "1. Leave granted.
> 2. Heard the learned counsel appearing on both sides.
> 3. We are not inclined to interfere with the order passed by the High Court, though, it is correct that proper issues were not framed by the Commissioner for Employees' Compensation. Be that as it may, however, the Insurer had taken a plea in the reply that the Driver was not holding the Driving Licence. The Driver was also cross-examined at length, but he was not able to produce the Driving Licence on the ground that at the time of accident, it was lost. Witness was also examined as to hold the Insurer to discharge negative burden as to absence of Driving Licence. In view of the facts and circumstances of the case, plea taken as well as evidence adduced, it was incumbent upon the Driver to produce the Licence or duplicate copy of the same that has not been filed either in the High Court or even in this Court in the appeal filed by the Driver. He could have obtained a duplicate copy and ought to have produced it in case he possessed the Driving licence. His statement that he lost the same at the time of accident, does not inspire confidence.
> 4. **In the above circumstances, as the vehicle was admittedly insured, it would be appropriate to modify the directions issued by the High Court. As the vehicle was insured, we permit the claimant Driver to recover the amount from the Insurer and give liberty to the Insurer to recover the same, in turn, from the owner of the vehicle**.
> 5. To the above extent, the order passed by the High Court is modified. The appeal is, accordingly, disposed of."

6. It appears that subsequent to the aforesaid order, the appellant preferred another application before the learned Commissioner, Employees' Compensation seeking compensation towards the penalty under Section 4A(3)(b) of the E.C. Act. The learned Tribunal imposed a penalty of Rs. 2,50,200/- and fastened the liability upon the shoulders of the appellant/insurance company to be paid to the respondent No.1/claimant, which order is assailed in the present matter.

7. Learned counsel for the appellant urged that the Supreme Court

vide order dated 13.12.2018 had modified the order to the effect that the compensation would be payable by the appellant/insurance company, which may ultimately be recovered from the claimant and registered owner. It was urged that the issue of liability to pay compensation towards the penalty under Section 4A(3)(b) of the E.C. Act was not considered by the Supreme Court.

8. First thing first, there is no denying the fact that despite there being clear evidence brought on the record during the inquiry before the learned Commissioner, Employees' Compensation that there was existing relationship of employer and employee between the parties, no interim compensation was given to respondent No.1/claimant within the stipulated period of one month under Section 4A(2) &(3) of the E.C. Act. Therefore, there was justifiable grounds to award penalty under the Section 4A(3)(b) of the E.C. Act [2].

9. Secondly, on perusal of the certificate-cum-policy of insurance dated 09.06.2007, it appears that besides the premium towards third-

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[2] [4A. **Compensation to be paid when due and penalty for default**.—*(1)* Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the 2 [employee], as the case may be, without prejudice to the right of the 2 [employee] to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher, rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, on the amount due; and

(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.

Explanation.—For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

[(3A) The interest and the penalty payable under sub-section (3) shall be paid to the 2 [employee] or his dependant, as the case may be.]

party liability and personal accident cover for owner/driver to the extent of Rs. 2,00,000/- *viz.* Rs. 6,090/- +Rs. 100/- respectively, additional premium had been paid towards the legal liability for operation/maintenance for three persons amounting to Rs. 75/-.

10. The question that begs an answer is: whether the compensation towards the penalty under Section 4A(3)(b) of the E.C. Act can be imposed or be fastened upon the appellant/insurance company, despite the fact that the respondent No.1/injured/claimant was not possessing a valid driving licence?

11. In view of the letter and spirit of the order dated 13.12.2018 passed by the Supreme Court, this Court has no hesitation in holding that even the penalty amount has to be borne by the appellant/insurance company, which it shall be entitled to recover from respondent No.2/registered owner of the vehicle.

12. Accordingly, the present appeal is disposed of with the direction that the penalty amount of Rs. 2,50,200/- shall be paid by the appellant/insurance company to respondent No.1/claimant within one month from today, failing which the appellant/insurance company shall be liable to pay the said amount with interest @ 9% p.a. from the date of this judgment till its realization.

13. However, the appellant/insurance company shall also be at liberty to seek recovery of the amount of compensation paid towards the imposed penalty to respondent No.1/claimant from the respondent No.2/registered owner of the vehicle.

14. The pending application is also disposed of.

DHARMESH SHARMA, J.

APRIL 02, 2025/sp/sa