



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

% **Judgment reserved on: 06 March 2025**
Judgment pronounced on: 02 April 2025

+ **FAO 289/2022 & CM APPL. 49643/2022**

THE NEW INDIA ASSURANCE COMPANY
LTD.

.....Appellant

Through: Mr. Gaurav Nair & Ms. Veera
Mathai, Advs.

versus

PRADEEP KUMAR @ PRADEEP YADAV
AND ORS.

....Respondents

Through: Mr. R.K. Nain, Ms. Pratima N.
Lakra, Mr. Chandan Prajapati & Ms.
Anamika, Advs. for R1 & 2.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. This appeal has been preferred by the appellant/insurance company whereby they have assailed the order/judgment dated 07.09.2022 passed by the Commissioner, Employees' Compensation, District North West, whereby the claim for compensation filed by the respondents was allowed, granting him a total compensation of Rs. 17,06,175/- payable with interest @ 12% p.a. w.e.f. 16.05.2020 till its realization along with funeral expenses of Rs.5,000/- besides penalty amount of Rs.4,26,544/- under section 4A(3)(b) of the Employees' Compensation Act 1923, ("the EC Act") which liability was fastened on the shoulders of the appellant/insurance company.



FACTUAL MATRIX:

2. Shorn off unnecessary details, admittedly, Sh. Jonny Yadav “hereinafter *referred as the deceased*” was employed as a cleaner on vehicle bearing registration number NL-01N-6520, a truck owned by Smt. Sukhvinder Kaur/respondent No. 5. On 16.05.2020, the deceased was discharging his duties as a cleaner while the vehicle was engaged in a business trip from Kolkata to Delhi, with Sh. Pradeep Kumar @ Pradeep Yadav/respondent No. 1, operating the said vehicle as its driver. It was claimed that at approximately, 08:00 a.m. on 16.05.2020, while the vehicle was traversing Choparan Ghati, near Hathi Baba Temple, located in Choparan District, Hazaribagh, an accident occurred. It was alleged that another vehicle was stationary on the road, and in an attempt to avert a collision with a third vehicle, respondent No. 1 (the driver) maneuvered the truck to the left side and applied the brakes, but the brakes failed, causing the truck to collide with the stationary vehicle, resulting in the damage.

3. As a consequence of the accident, the deceased, sustained severe injuries. He was initially taken to a nearby hospital for medical treatment. Considering the gravity of his condition, he was subsequently referred to a larger medical facility. However, while being transported to Ranchi, the deceased succumbed to his injuries, and he was declared “brought dead” by the Government Hospital. The presence of the deceased in the vehicle was because of its trade & business. It was claimed that the deceased was about 18 years of age



and was being paid Rs.15,000/- per month + Rs.200/- per day was being paid as food allowance.

4. The vehicle was admittedly insured with the Appellant Insurance Company under Policy No. 35420031190100008590, which was valid from 09.03.2020 to 08.03.2021. The policy was issued in the name of Sh. Sukhwinder Kaur/Respondent No. 5. It is pertinent to note that the Appellant Insurance Company had charged an additional premium under the provisions of the EC Act.

5. In light of the aforesaid incident, respondent Nos. 1 to 4 instituted a Claim Petition before the learned Commissioner, seeking compensation for the death of Sh. Jonny Yadav.

6. The Learned Commissioner framed the following issues for adjudication:

- “i. Whether the accident leading to death of deceased occurred in the course of his employment and if so, to what amount of compensation are the claimants entitled to?
- ii. Any other relief?
- iii. Whether the respondents are liable for penalty under Section 4A of the Act? And if so, to what extent and to what amount?”

7. It is borne out from the record that the Authorised Representative of respondent Nos. 1 to 4, namely Respondent No. 1 – Sh. Pradeep Kumar, adduced evidence by way of an affidavit and further relied upon the documents like the police complaint, medical treatment of the deceased, copy of dead body certificate, fitness certificate of the vehicle, etc. However, the appellant insurance company failed to lead



any evidence in their defence to the Learned Commissioner.

IMPUGNED AWARD

8. Suffice to state that the Learned Commissioner, vide order dated 07.09.2022 in Case No. ECD/27/NW/2020/4053-55, answered Issue No.1, 2 & 3 in favour of the respondents, to the effect that the injuries were sustained by him during the course of his employment and assessed his wages @ Rs.15,000/- per month, plus Rs. 200/- per day as food allowance, and finding that he was 17 years of age at the time of the accident, the compensation was calculated as under: -

- | | | | |
|------|--|---|----------------------------|
| i) | Relevant factor laid down under schedule IV of the Act for 17 years of age | : | 227.49 |
| ii) | 50% of monthly wage restricted to Rs.15,000/- p.m | : | 7500/- |
| iii) | Amount of compensation payable to the Dependents of deceased | : | 227.49 x 7500= 17,06,175/- |
| iv) | Funeral expenses allowed u/s4 (A) of the Act | : | Rs.5000/- |
| | Total amount | : | Rs.17,11,175/- |

9. Accordingly, a total compensation of ₹17,06,175/- was awarded, along with simple interest as per Section 4(A) of the E.C. Act at the rate of 12% per annum, effective from 16.05.2020, i.e., the date of the incident, until the date of payment. Additionally, funeral expenses amounting to Rs. 5,000/- and a penalty of Rs. 4,26,544/- were also awarded.

10. The appellant/insurance Company was further directed to pay the total sum by way of demand draft/pay order in favour of the “Commissioner Employees Compensation-VII” within 30 days from



the date of the said order. In compliance with the Order dated 07.09.2022, the appellant/insurance Company filed an application for deposit of cheque before the Learned Commissioner. The appellant also moved an application seeking the issuance of a certificate of deposit for the amount so deposited.

11. Additionally, the appellant/insurance Company filed an application requesting, non-release of the awarded amount in favour of respondent Nos. 1 to 4, while intimating the Learned Commissioner regarding the intended filing of an Appeal against the Order dated 07.09.2022. Upon due consideration, the Learned Commissioner issued a Certificate of Deposit certifying the deposit of Rs. 26,30,780/-, which was paid via Cheque No. 119029 dated 14.10.2022, in compliance with the Order dated 07.09.2022.

12. The principal grounds for challenging the impugned award dated 07.09.2022 by the appellant/insurance company are as follows:

- i. That there is no proof that the employer was employed as a cleaner on the vehicle owned by respondent no.5.
- ii. That there is no proof that the accident had actually occurred.
- iii. That the learned commissioner lacked jurisdiction to entertain the claim.
- iv. That the appellant/ insurance company is not liable to pay penalty u/S 4A of EC Act, due to the fault of respondent no.5.

ANALYSIS AND DECISION



13. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar. I have also perused the relevant record of the case.

14. First things first, it would be apposite to re-produce the findings recorded by the Learned Commissioner on the issues framed which goes as under : -

“Issue No. (i) & (ii):- The claimant has claimed that his son Sh. Jonny Yadav was employed as Cleaner with Respondent no.1 on his vehicle bearing No.NL-01N-6520 truck who met with an accident resulting into death on 16.05.2020 in the course out of his employment with Respondent No. 1. The Respondent has admitted the factum of employment and the accident and has further admitted that accident leading to death of deceased has occurred out of and in the course of his employment. However Respondent No. 2 has refuted the claim but has failed to place any contra evidence in his defence. Hence it is held that the deceased was working with Respondent as cleaner on his vehicle bearing No. NL-01N-6520 and met with accident leading to his death in the course out of his employment with Respondent No.1.

The claimant has claimed that the deceased was being paid ₹15,000/- p.m. alongwith food allowance @200/- per day but nothing has been placed on record to support the same. On the other hand, Respondent No.1 has admitted that deceased was being paid wage as per law. Minimum wage of unskilled worker at that time of accident i.e. 16.05.2020 was ₹15,310/- p.m. hence the same is being taken into account for the purpose of calculation of compensation. But in view of notification of Central Govt. under S.O.71(E) dated 03.01.2020 of Central Govt. the wage of the deceased is being restricted to ₹15,000/- p.m. The age of deceased has been claimed as 18 years at the time of accident but the Parivar Register placed on record by claimant shows his death of birth as 17.05.2003 hence he had completed 17 years of age at the time of accident and the same is being taken into consideration for the purpose of calculation of compensation. The relevant factor therefore is being taken as 227.49. The amount of compensation in this case is calculated as under:-



(i) Relevant factor laid down under schedule IV of the Act for 17 years of age	:	227.49
(ii) 50% of monthly wage restricted to ₹15,000/- p.m.	:	7,500/-
(iii) Amount of compensation payable to the Dependents of deceased	:	227.49 x 7500
(iv) Funeral expenses allowed u/s 4(A) of the Act	:	₹5,000/-
Total Amount	:	₹17,11,175/-

Therefore, I hold that the claimants are entitled to receive an amount of ₹17,11,175/- as compensation including funeral expenses from Respondent No. I on account of death of Sh. Jonny Yadav, which caused due to accident occurred on 16.05.2020 out of and in the course of his employment with Respondent No. I.

The compensation was payable to the claimants within one month from the date on which the accident had occurred and in this case, the accident had occurred on 16.05.2020 and the compensation would have been paid to them by 15.06.2020 but the same has not yet been paid, so in view of the provision laid down under clause (a) of sub-section (3) of Section 4A of the Act and the judgment dated 24.01.2022 of Hon'ble Supreme Court in case titled as Ajaya Kumar Das & Anr. V/s Division Manager & Anr., the dependants of deceased are entitled for simple interest on the amount of compensation i.e. ₹17,06,175/- @12% per annum w.e.f. 16.05.2020 till the date of realization of the compensation amount by the Respondent No.1.

Admittedly vehicle of Respondent No.1 was duly insured at the time of accident vide policy No.35420031190100008590 with Respondent No.2, therefore Respondent No.2 is liable to indemnify the insured i.e. Respondent No.1 for compensation and interest.

Issue No. (iv):- On issue of penalty, Respondent No.1 has stated that he cannot be held liable to penalty as he had paid additional premium for coverage of his employees under the Act and the information of accident and the death of deceased was immediately given to Respondent No.2 just after the accident. OD claim placed on record shows that the Respondent No.2 was having the information of accident and therefore claim was ledged by Respondent No.1 with



him. Respondent No.1 has further relied upon the judgment of Hon'ble Rajasthan High Court in cases titled as "United India Insurance Co. Ltd. Vs. Roop Kanwar & Ors." cited at 1991 ACJ 7, which has been upheld by the Hon'ble Supreme Court in case titled as "Ved Prakash Garg Vs Premi Devi & Ors." cited at 1998 ACJ 1 (SC), as additional premium was charged by Respondent No.2 from Respondent No.1 for coverage of employees under the said Act. He also relied upon judgment of Hon'ble High Delhi High Court in case titled as "Oriental Insurance Company Ltd. Vs. Pappu Kumar @ Pushap Kumar & Ors." cited at (2014) 8 HCC (Del) 393.

On the other hand, Respondent No.2 has denied to own the liability for penalty stating that the penalty is imposed upon employer in default of making the payment of compensation within stipulated time as prescribed under the Act and if there is no justification for delay and he has also relied upon the following judgment: -

- (vi) Judgment of Hon'ble Supreme Court of India in case titled as "Jaya Biswal vs. Branch Manager, IFFCO Tokio General Insurance Co." Civil Appeal 869 of 2016.
- (vii) Judgment of Hon'ble Supreme Court of India in cases titled as "The New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya & Anr." Appeal (Civil) No.2333 of 2006.
- (viii) Judgment of Hon'ble Supreme Court of India in cases titled as "L.R. Ferro Alloys Ltd. vs. Mahavir Mahto and Ors." C.A. No.150/1999.
- (ix) Judgment of Hon'ble High Court of Delhi in case titled as "Oriental Insurance Co. Ltd. vs. Bimla Devi and Ors." FAO No. 107/1994 and CM No.1392/994.
- (x) Judgment of Hon'ble Supreme Court of India in case titled as "P.J. Narayan vs. Union of India (UOI) and Ors." (Civil) No. 341 of 2003.

I have gone through the record and observed that Respondent has charged ₹150/- additional premium on account LL to paid driver, conductor, cleaner employed for operation under the said Act and hence he was obliged to pay the due amount of compensation to the dependants of deceased within time as prescribed under the Act as he was having the intimation of accident as revealed from the OD claim lodged with him but Respondent No.2 has failed to pay the due amount of compensation to the dependants of deceased.



Hence Respondent No. 2 is liable for the delay in making the compensation to the dependants in view of judgment of Hon'ble High Court of Rajasthan in case titled as "United India Insurance Col. Ltd. v/s Roop Kanwar & Ors." which has been discussed and upheld by the Hon'ble Supreme Court in it's judgment in case titled as "Ved Prakash Garg V/s Premi Devi & Ors." as relied upon by Respondent No.1. As even if after having the information of accident of the employee, insurer does not pay the due compensation to the employee or the dependents of employee then owner/employer cannot be held liable to the delay, more particularly when insurer does not place on record anything that what was the lapse on the part of employer which caused the delay. A period for more than 2 years has lapsed since the date of accident, hence I am of the opinion that a penalty to the extent of 25% of the compensation which comes to ₹4,26,544/- would be just and proper in this to meet the end of justice and the same is accordingly imposed upon the Respondent No.2.

As decided above, Respondent No.2 is hereby directed to deposit the compensation amount ₹17,06,175/- alongwith simple interest @ 12% p.a. w.e.f. 16.05.2020 till the date of payment alongwith feneral expenses of ₹5,000/- and the penalty amount of ₹4,26,544/- by way of demand draft/pay order in favour of "Commissioner Employees Compensation-VII" within 30 days from the date of this order failing which proceedings to recover the same shall be initiated as per the provisions of Section 31 of the Act."

15. The plea that the deceased was not a regular employee under respondent no.5 is worthless since Section 2(9) of the EC Act also includes an employee whose services are temporarily engaged by the employer. The evidence that the deceased was working as a Cleaner/Khalasi was never challenged by the appellant/Insurance Company. It would be travesty of justice to insist for a contract of employment or appointment letter where due to sheer poverty and unemployment, employees engage Cleaner/Khalasi in connection with the transport business and hire and fire them at will.



16. In view of the aforesaid findings recorded by the Learned Commissioner, the plea advanced by the appellant that there was no relationship of employer and employee between the parties cannot be sustained in law. As regards the factum of accident is concerned, it was the plea of respondent no.5/ employer that the accident was reported to PS Chomparan, District Hazaribagh, State of Jharkhand and the information about the accident was reported to the appellant insurance company without any delay which was immediately provided with all the relevant documents. Once the initial onus of proving the accident had been discharged by the respondents/claimants, the burden shifted to the appellant/Insurance Company, which failed to lead any evidence so as to suggest that the claim of the insured vehicle being involved in an accident was false.

17. Likewise, the plea that the Learned Commissioner, lacked jurisdiction is also not sustainable since the appellant/Insurance Company have its regional offices at Delhi and the deceased was also employed in Delhi, although, serving outside at the time of accident and the accident occurred during the course and arising out of his employment with respondent no.5.

IMPOSITION OF PENALTY

18. Insofar as the imposition of liability to pay a penalty under Section 4A(3)(b) of the EC Act, 1923 is concerned, admittedly, the additional premium had been charged by the appellant/Insurance Company from the registered owner of the vehicle and therefore, the



appellant/Insurance Company cannot escape from such financial liability as well. Reference in this connection can be invited to the decision in the case of **Ved Prakash Garg v. Premi Devi**¹ wherein the Supreme Court examined the issue to the effect- “*whether where an employee receives a personal injury in a motor accident arising out of and in the course of his employment while working on the motor vehicle of the employer, whether the insurance company, which has insured the employer-owner of the vehicle against third-party accident claims under Motor Vehicles Act, 1988 (hereinafter referred to as ‘the Motor Vehicles Act’)* and against claims for compensation arising out of proceedings under the Workmen's Compensation Act, 1923 (hereinafter referred to as ‘the Compensation Act’) in connection with such motor accidents, is liable to meet the awards of Workmen's Commissioner imposing penalty and interest against the insured employer under Section 4-A(3) of the Compensation Act”.

19. The Supreme Court held that insurance companies concerned will be statutorily as well as contractually liable to make good the claims for compensation arising out of the employers' liability computed as per the provisions of the Compensation Act. It was further held that the compensation to be paid shall only the principal amount but also the interest payable for the delayed period. It would be apposite

¹ (1997) 8 SCC 1



to refer the observations made by the Supreme Court answering the aforesaid question, which go as under:

“14. “Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not de hors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under Section 4-A(3) may start running for the purpose of attracting interest under sub-clause (a) thereof in case where provisional payment has to be made by the insured employer as per Section 4-A(2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then Section 4-A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of Section 4-A(3)(a) of the Compensation Act....”

However, the same held to be not true in case of section 4-A(3)(b), it was held that:

“.....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. On the aforesaid interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner, Sections 3 and 4-A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. 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."

20. Thus, where there is default on the part of the insurer, in not making timely payment of interim compensation to the workman/employee, the liability to pay compensation under section 4-A(3)(b) of the EC Act cannot be fastened upon the shoulders of the insurance company. At the same time,



the Supreme Court in the cited case of **Ved Prakash Garg v. Premi Devi** (supra), cited with approval a decision by the Rajasthan High Court titled as **United India Insurance Company Ltd. v. Roop Kanwar And Ors.**², 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, the liability to pay the penalty under Section 4(A)(3)(b) of the Act shall also be borne by the insurer.

21. In the present case, a bare perusal of the policy of insurance dated 09.03.2020 on the record *ex facie* shows that apart from the basic third-party insurance totaling ₹43,037/-; an additional premium was paid for the owner driver i.e. ₹275/- -besides additional premium for covering legal liability (LL) to employees ₹150/-. In the light of the assertion of respondent no. 5/employer that the intimation of the accident was immediately given to the appellant insurance company, the impugned judgment dated 07.09.2022, insofar as it imposes the liability for payment of compensation towards the penalty under Section 4(A)(3)(b) of the EC Act, upon the shoulders of the appellant/ Insurance Company cannot be interred with.

22. In view of the foregoing discussions, the present appeal is dismissed. Pending application is also disposed of.

DHARMESH SHARMA, J.

APRIL 02, 2025

Sadiq/Ch

² 2006(2) TAC 973