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

% **Date of decision: 28th April, 2025**

+ **FAO 502/2018**

SAIRA KHAN & ORS

.....Appellants

Through: Mr. R.K. Nain, Ms. Pratima N.
Lakra and Mr. Chandan
Prajapati, Advs.

versus

**M/S NATIONAL INSURANCE CO LTD
& ANR**

.....Respondents

Through: Mr Ajay Gaur, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. No one has appeared for respondent no. 2/registered owner/employer.
2. Having heard the learned counsel for the appellants/claimants and the learned counsel for the respondent No. 1/Insurance Company, this Court proceeds to decide the instant appeal filed under Section 30 of the Employees Compensation Act, 1923 ["**EC Act**"] assailing impugned order dated 28.05.2018 passed by The Learned Commissioner, Employees' Compensation Act, whereby their claim petition for penalty to be imposed upon the respondent no. 2 Employer under Section 4B(3)(b) of the EC Act was dismissed.
3. In a nutshell, the appellants filed a claim petition under Section 22 of the EC Act seeking compensation on account of death of Workman,



Jameel Ahmad S/o Sh. Nasir Khan employed as a driver on vehicle bearing registration No. UP-32-CN-9206 belonging to and under employment of respondent No.2 (respondent No.1 before the learned Commissioner). It was claimed that deceased was drawing monthly wages of Rs. 8,000/- plus Rs.300/- per day as food allowance. The claim petition was contested by the respondents viz., the employer as well as the insurer of the offending vehicle.

4. Long story short, it was held by the learned Commissioner *vide* judgment-cum-award dated 29.04.2016 that there was in existence relationship of employer and employee between the deceased and the respondent No.2. It was further held that the deceased died during the course of his employment with respondent No.2, and accordingly, compensation under Section 4A(3)(a) of the EC Act, to the tune of Rs.6,30,880/- was awarded along with simple interest @ 12% per annum from the date of accident i.e. 22.05.2015 till the date of payment.

5. It appears that subsequently the appellants moved another application seeking compensation in the nature of penalty under Section 4A(3)(b) of the EC Act and the said application came to be dismissed by the learned Commissioner. It would be apposite to re-produce the impugned order which reads as under:

“1. This order will dispose of the application dated 10.05.2018 filed by the applicant for issue of show cause notice to respondents and imposition of penalty under Section 4-A read with section 22-A of the Employee's Compensation Act 1923.

2. In this case, compensation order was passed by the then Commissioner Employee's Compensation Sh. K.M. Singh *vide* order no. WCD/175/NW/15/3127-29 dated 29.04.2016 wherein, the claimant was awarded compensation of Rs.6,25,880/- with simple @ 12% interest along, with Rs.5,000/- as funeral charges.



3. As per Hon'ble High Court of Delhi order dated 27.10.2017 in FAO No. 327/2016 in case titled as 'Delhi Development Authority &Anr. Vs. Raju &Anr.' Hon'ble High Court has held as under:

'This Court is receiving a series of orders which are passed by the Employee's Compensation Commissioner wherein Employee's Compensation Commissioners are entertaining a second application/ petition under Section 22 of the Act for grant of penalty although the issue of penalty must necessarily be examined and decided when an application under Section 22 of the Act is firstly filed. On one cause of action, once various reliefs can be claimed, all reliefs have to be claimed in one original application under Section 22 of the Act and once the original application under Section 22 of the Act is decided, then. Employee's Compensation Commissioner ought not to entertain fresh original applications only for grant of penalty under Section 4-A of the Act otherwise this is against the direct mandate not only of Explanation V to Section 11 but also of Order II Rule 2(3) CPC which states that if a particular relief is not asked for, then a person who does not ask for reliefs although he was entitled to he is then barred because of Order II Rule 2(3) CPC from filing a fresh claim with respect to the relief which ought to have been prayed for in the original proceedings but were not prayed. Therefore, a copy of this order be sent to the Law Secretary to the GNCT of Delhi to be circulated among all the Commissioners acting under the EC Act that after the decision of the 'main case under section 22 of the Act, no further and subsequent application should be granted for grant of penalty under section 4-A of the Act inasmuch as penalty under section 4-A of the Act should be prayed for in the original proceedings filed under section 22 of the Act and such second application seeking penalty under section 4-A of the Act should not be entertained more so when this relief was specifically prayed for in the first claim petition, and was not granted by the judgment which decided the original/ first claim petition.

The copies of above orders were circulated by Principal Secretary (Law, Justice & LA) among all the Commissioners acting under the Employee Compensation Act.

4. Since the original claim under section 22 of the act has already been decided, in view of the Hon'ble High Court of Delhi



order dated 27.10.2017 in FAO No. 327/2016 in case titled as 'Delhi Development Authority & Anr. Vs. Raju & Anr.' the application dated 10.05.2018 stands dismissed.”

6. Learned counsel for the respondent No.1/Insurance Company urged that since the reliefs for interest and penalty were claimed in the earlier petition, which culminated in the order dated 29.04.2016 and such relief was denied, no fresh claim petition could have been filed seeking relief under Section 22 read with Section 4A(3)(b) of the EC Act.

7. *Per contra*, learned counsel for the appellants relied on decision of this Court in the case of **Bharat Carriers Ltd. v. Fayeze Sekh**¹ as well as decision by the Supreme Court in the case of **Oriental Insurance Company Ltd. v. Siby George**².

8. At this juncture, it would be appropriate to reproduce Section 4A of the EC Act, which provides as under:

“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 [employee], as the case may be, without prejudice to the right of the [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

¹ 2014 SCC OnLine Del 207

² (2012) 12 SCC 540



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 (2 of 1934). (3A) The interest and the penalty payable under sub-section (3) shall be paid to the [employee] or his dependant, as the case may be."

9. A careful perusal of the aforesaid Section would show that Section 4A(3) of the EC Act is divided into two distinct parts. Sub-clause (a) pertains to a direction issued to the employer to pay simple interest on the arrears, in addition to the compensation amount, at the rate of 12% per annum or such higher rate as may be prescribed, taking into account the lending rates of scheduled banks or as may be specified by the Central Government. In contrast, sub-clause (b) applies in situations where the employer defaults in complying with the provisions of sub-section (2).

10. The aforesaid position in law was explained by the Supreme Court in the case of *Oriental Insurance Company Limited v. Siby George (supra)*, wherein it was observed as under:

"8. It is, thus, to be seen that sub-section (3) of Section 4-A is in two parts, separately dealing with interest and penalty in clauses (a) and (b) respectively. Clause (a) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of sub-section (3) it becomes clear that payment of interest is a consequence of default



in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default per se.”

11. In view of the above, the impugned order dated 28.05.2018 cannot be sustained in law. Reliance placed by the learned Commissioner in the case of **Delhi Development Authority v. Raju**³ was misplaced. Although the said decision appears to have been challenged in Special Leave Petition before the Supreme Court, which was dismissed, however, it is manifest that the same is *per incuriam* in view of pronouncement by the Hon'ble Four Judges of the Supreme Court in the case of **Pratap Narain Singh Deo v. Srinivas Sabata**⁴. The decision was referred by the Supreme Court in the case of ***Oriental Insurance Company Limited v. Siby George***.

12. The crux of the matter is that it was the duty of the vehicle owner to pay compensation as provided by Section 4 of the EC Act, as soon as personal injury was caused to the workman. The employer not only failed to do so but also did not make any provisional payment under sub-Section (2) to section 4 of the EC Act. It is also apparent that employer on the other hand took preliminary objection challenging the jurisdiction of this Court, which was not entertained.

13. It is under aforesaid circumstances that the appellants were forced to file a fresh petition under Section 4A (3) (b) read with Section 22 of the EC Act. The issue infact was earlier decided by this Court in the case of ***Bharat Carriers (supra)***, wherein it was held as under:

³ FAO No. 327/2016 dated 27.10.2017 (Delhi High Court)

⁴ (1976) 1 SCC 289



“4. It also requires to be noted that proceedings for imposition of penalty are consequent upon a finding first being arrived at that compensation is payable to an employee on account of accident happening during the course of employment. It is only after the finding that compensation is payable is first arrived at, that thereafter justification has to be sought by issuing of a show cause notice as to why there was delay in payment of the compensation. Therefore, it is nothing illegal that consequent upon finalization of proceedings for determination of compensation, that thereafter, proceedings under Section 4A are initiated, and in the facts of the present case it accordingly took place for being held that the same were not decided at the time of passing of the Award of compensation in the main proceedings.”

14. In the instant case, the impugned order was passed without holding any inquiry. Since considerable time has already elapsed to the detriment of the appellant, it would not be justifiable to remand the matter back to the learned Commissioner. Rather it is evident that there was no compliance of the beneficial provision contained in section 4A of the EC Act by respondent no.2/employer, and therefore, this is a fit case where respondent no. 2/employer should be visited with penalty in terms of section 4A(3)(b) of the EC Act.

15. In view of the above discussion, the present appeal is allowed and the impugned order dated 28.05.2018 is set aside thereby directing that the appellant shall be entitled to 50% of the total amount of compensation, to which they were made entitled *vide* judgment-cum-award dated 29.04.2016 *viz.* a sum of Rs. 3,15,440/-.

16. The said amount shall be personal liability of the employer/respondent No.2 and shall be paid by the employer i.e. respondent No.2 within 30 days from today, failing which the employer/respondent No.2 shall be liable to pay the same with interest @ 6% per annum from the date of this order till realization.



2025:DHC:3119



17. The present appeal stands disposed of.

DHARMESH SHARMA, J.

APRIL 28, 2025/*Sadiq*