



IN THE HIGH COURT OF HIMACHAL PRADESH AT  
SHIMLA

**FAO No. 439 of 2012**  
**Reserved on: 30.11.2023**  
**Date of decision: 11.12.2023**

National Insurance Company Ltd.

.....Appellant.

Versus

Kalawati & others.

.....Respondents.

*Coram*

**The Hon'ble Mr. Justice Sushil Kukreja, Judge.**

<sup>1</sup> *Whether approved for reporting?*

For the appellant: Mr. Suneet Goel, Advocate.

For respondents 1 & 2: Mr. Y. Paul, Advocate.

For respondent No. 3: Mr. Bimal Gupta, Sr. Advocate,  
with Mr. Varun Thakur,  
Advocate.

For respondent No. 4: Ms. Kusum Chaudhary,  
Advocate.

**Sushil Kukreja, Judge.**

The present appeal is maintained by the appellant (Insurer)/National Insurance Company (hereinafter referred to as "the appellant"), under Section 30 of the Employees Compensation Act, 1923 (for short "the Act"), against the order dated 05.05.2012, passed by Commissioner, Employee's Compensation, Solan, in WCA

<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

No. 58/02 of 2011, whereby compensation amounting to Rs.4,52,760/- alongwith interest @12% per annum has been awarded.

2. Succinctly, the facts giving rise to the present appeal are that deceased-Sunil Kumar, who was the son of respondents No. 1 and 2, was engaged as conductor in a truck, bearing registration No. HP-09-0657, by respondent No. 3-Shri Sukh Pal and the deceased also used to work as a coolie in the aforesaid truck. On 22.01.2006, around 01:25 p.m., the deceased, in the course of his employment, was travelling in the aforesaid truck and when the vehicle reached near Durgaghat, Arki, the vehicle rolled down the valley due to the rash and negligent driving of respondent No. 4-Om Prakash, resultantly, he died. The corpse of the deceased was brought to PHC Arki, where postmortem was conducted on 22.01.2006. As per the petitioners (respondents No. 1 and 2 herein), the deceased died in the course of his employment with respondent No. 3-Sukh Pal and the vehicle was insured with the appellant.

3. The petitioners further stated that the deceased was getting Rs.5000/- per month as fixed salary for his job, as Conductor-cum-Coolie, and Rs.100/- per day as daily

allowance and at the time of the accident he was 18 years old. The petitioners earlier preferred a petition under Section 166 of the M.V. Act, before MACT-I Solan, which was withdrawn with liberty to file fresh petition.

4. The owner and driver of the vehicle (respondents No. 3 and 4 herein) filed reply and admitted that the deceased was engaged as conductor in the aforesaid truck by the owner (respondent No. 3 herein) and he also used to work as Coolie in the aforesaid truck. It was denied that the accident occurred due to the negligence of the driver (respondent No. 4 herein), rather the accident occurred due to the negligence of the driver of truck No. HP-07-5940, as he lost control over his vehicle. It was denied that the salary of the deceased was Rs.5000/- per month and he was getting Rs.100/- per day as daily allowance. As per the replying respondents, the deceased was being paid Rs.1800/- per month and the vehicle was insured with the National Insurance Company (appellant herein), therefore, the Insurance Company is under obligation to indemnify the owner of the vehicle to pay compensation to the petitioners.

5. The Insurance Company (appellant herein) by filing reply to the petition took preliminary objection of

maintainability and on merits it was denied that the deceased was employed as conductor on truck by respondent No. 1 (owner of the vehicle and respondent No. 3 herein). It was also denied that the deceased was receiving Rs.5000/- per month as salary and Rs.100/- daily allowance from respondent No. 1.

6. On the pleadings of the parties, the learned Tribunal below has framed the following issues:

- “1. Whether the deceased Sunil Kumar was engaged as conductor by respondent No. 1 in his truck No. HP-09-0657 and he died during the course of his employment as conductor and collie in vehicle No. HP-09-0657 which met with accident? OPP**
- 2. Whether the deceased Sunil Kumar falls in the definition of workman as required as per Workmen Compensation Act? OPP**
- 3. Whether the petitioners are entitled to get compensation and if so, to what extent and from whom? OPP**
- 4. Whether the driver of vehicle was not having valid and effective driving licence? OPR**
- 5. Relief.”**

After deciding issues No. 1 to 3 in favour of the petitioners (claimants) and issue No. 4 against the respondents, the petition was allowed and the respondents were held liable to

pay compensation of Rs.4,52,760/- with interest at the rate of 12% per annum w.e.f. 22.02.2006, i.e., one month after the date of the accident till deposit of the amount to the petitioner (claimants), failing which penalty and interest would be liable to be paid by the respondent No. 3 on the awarded amount as per law.

7. Feeling dissatisfied, the appellant preferred the instant appeal under Section 30 of the Employees Compensation Act, 1923.

8. On 02.12.2022 the appeal was admitted for hearing on the following substantial questions of law:

**“1. Whether the impugned order can be sustained in view of the alleged violation of provisions of Section 4(i) of the Workmen’s Compensation Act, 1923?**

**2. Whether the learned Commissioner below was correct in awarding interest on award, especially, when the owner/employer had not intimated the insurance company about the factum of accident?”**

9. I have heard the learned counsel for the appellant, learned counsel for the respondents No. 1 and 2, learned Senior Counsel for respondent No. 3 and learned counsel for respondent No. 4 and carefully examined the entire record.

10. The Workmen's Compensation Commissioner after hearing the parties concerned awarded a sum of Rs.4,52,760/- as compensation in favour of the petitioners w.e.f. 22.02.2006 i.e. one month after the date of accident till the deposit of amount within a month failing which penalty and interest would be payable by the insurance company. The relevant portion of the order reads as under:

**“The respondent No. 3 being insurer of offender truck No.HP-09-0657 is directed to deposit the awarded amount including interest at the rate of 12% per annum w.e.f. 22.02.2006 i.e. one month after the date of accident till the deposit of amount in this Court by way of crossed bank draft payable to Commissioner within a month from today failing which penalty and interest would be liable to be paid by the respondent No. 3 on the awarded amount as per law.The claim petition is disposed of accordingly.”**

11. The claimants as well as the owner being satisfied with the said award did not file any appeal. However, the insurance company carried the matter in appeal before this Court and contended that the insurance company would be liable only to make good the claim for compensation so far as the principal amount along with interest is concerned. But it could not have been made liable to pay the amount of penalty as ordered by the Workmen's Compensation Commissioner as this amount of penal nature

was awarded against the insured/owner on account of his personal default as per Section 4-A(3) of the Workmen's Compensation Act and for such default on the part of the insured, the insurance company was not liable to indemnify the insured.

12. It is a settled law that the penalty imposed on the insured on account of his/her failure to make payment of amount payable under the Act is not to be paid by the insurer. In **Ved Prakash Garg Vs. Premi Devi, (1997)8 SCC 1**, the Hon'ble Apex Court observed that the insurance company is liable to pay not only the principal amount of compensation payable by insured employer but also interest thereon, if ordered by the Commissioner to be paid by the insured employer. Insurance company is liable to meet claim for compensation along with interest as imposed on insured employer by the Act on conjoint operation of Section 3 and 4A(3)(a) of the Act. It was, however, held that it was the liability of the insured employer alone in respect of additional amount of compensation by way of penalty under section 4-A (3)(b) of the Act. The relevant portion of the aforesaid judgment reads as under:

***“As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered***

***partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation alongwith interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-Section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone."***

13. In the case on hand, the Workmen's Compensation Commissioner held the appellant insurance company liable to make good the claim to pay the amount of compensation along with interest as well as penalty. However, in view of the law laid down by the Hon'ble Apex Court, the insurance company could not have been made liable to pay the amount of penalty and the same shall be paid by the owner of the offending vehicle (respondent No. 3 herein). Therefore, direction issued by W. C. Commissioner against insurance company to pay the penalty is required to be set aside and insurance company is only liable to pay the amount of compensation of Rs. 4,52,760/ to the claimants along with interest. The substantial questions of law are answered accordingly.



14. Hence, in view of my aforesaid discussion, the appeal is partly allowed and the award of the Commissioner under the Workmen's compensation Act in so far as it fastened the liability to pay the penalty on the insurance company is set aside. Appellant/insurance company is exonerated from paying the amount of penalty, which shall be paid by respondent No.3, who is directed to deposit such amount within a period of two months from today. Rest of the award remains intact.

15. In view of what has been discussed hereinabove, the appeal is disposed of accordingly.

( Sushil Kukreja )  
Judge

11<sup>th</sup> December, 2023  
(virender)