

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 1688 of 2003****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOHINDER PAL**

Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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ORIENTAL INSURANCE CO. LTD....Appellant(s)

Versus

GORDANBHAI ARJANBHAI HARIJAN & 1....Defendant(s)

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Appearance:

MR MAULIK J SHELAT, ADVOCATE for the Appellant(s) No. 1

HCLS COMMITTEE, ADVOCATE for the Defendant(s) No. 2

MR VIPUL A SHAH, ADVOCATE for the Defendant(s) No. 2

MS HINA DESAI, ADVOCATE for the Defendant(s) No. 1

MS PRERANA A PANDEY, ADVOCATE for the Defendant(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE MOHINDER PAL**Date : 27/02/2015****ORAL JUDGMENT**

1. Being aggrieved from the judgment and order passed by the Ex-Officio Commissioner for Workmen's Compensation and Judge, Labour Court, Amreli in Workmen's Compensation (Non-Fatal) Application No.2 of 2000 dated 13.02.2002, appellant - Insurance Company has preferred this appeal.

2. In the impugned judgment, learned Commissioner has awarded a sum of Rs.49,808/- along with 50% penalty amount i.e. Rs.24,904/- with simple interest at the rate of 6%. However, it has been ordered that if the amount is not paid within the stipulated time, the appellant will be entitled to get the amount recovered at the rate of 18% penal interest. Aggrieved from this award, Insurance Company has come in appeal.

3. At the very outset, learned counsel for the appellant representing the Insurance company has submitted that the Insurance Company is not liable to pay the sum of Rs.24,904 i.e. 50% of the penalty amount. Secondly, it has been submitted that the interest at the rate of 18% per annum is on higher side, which is required to be reviewed. Lastly it is submitted that excess amount deposited by the appellant is required to be returned to them.

4. On the other hand, learned counsel representing the original claimant has submitted that the Insurance Company as well as employer have abstained from remaining present before the Commissioner and the proceedings were proceeded against them *ex-parte*. It is submitted that, though served, the Insurance Company has chosen not to contest the case and, when the proceedings have proceeded *ex-parte*, it is not open for the Insurance Company to say that it was not liable for the penalty amount or that the interest was higher side or it is without any basis. Hence, the appeal is required to be dismissed.

5. I have heard both the learned counsels. The short question involved is as to whether the Insurance Company can be saddled with the liability to pay penalty at the rate of 50% of the compensation amount and also whether the penal interest at the rate of 18% was on higher side.

6. The point regarding liability of the Insurance company to pay the penalty has been discussed in a judgment passed by the Hon'ble the Apex Court in ***New India Insurance Co.Ltd. versus Shiv Singh and another*** reported in **2000 ACJ 1434** while absolving the Insurance company from payment of penalty, it has been held as under:

"4. The only question raised before us by learned counsel for the appellant is that the Workmen's Comparison Commissioner could not have held the insurance company liable for payment of the amount of penalty under section 4-A (3) of the Workmen's Comparison Act. This question was considered by this court in Ved Prakash Garg v. Premi Devi, 1998 ACJ 1 (SC) and it was held:

"19. 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 along with interest as imposed on the insured employer by the Workmen's Compensation 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 Compensation 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."

So the aforementioned judgment leaves no doubt that the Insurance company is not liable to pay the penalty i.e. Rs.24,904/- as awarded by the Workmen's Compensation Commissioner in the impugned award.

7. The second argument advanced by the learned counsel for the appellant has also some force.

8. No doubt, the employer as well as the Insurance company have been proceeded against *ex-parte* in the proceeding before the Workmen's Compensation Commissioner. But, mere absence of the Insurance company does not entail the consequences of it being saddled with liability of penal interest at the rate of 18% on the award amount. In order to be fair to both the sides, penal interest at the rate of 18% on award amount of Rs.49,808/- passed by the Workmen's Compensation Commissioner is on higher side and is ordered to be reduced to 12%.

9. Lastly, it has been submitted that penalty amount of Rs.24,904/- along with the balance of the interest amount i.e. 18% -12%=6% is lying deposited with the Tribunal is required to be returned.

10. In view of the foregoing discussion, this amount along with interest be returned to the appellant Insurance company. Accordingly, the Insurance Company is exonerated from the payment of the penalty at the rate of 50% of the principal amount. Now, the question arise as to who will pay the penalty amount to the claimant/workman.

The Hon'ble the Apex Court in case of **Ved Prakash Garg versus Premi Devi and others** reported in **(1997) 8 SCC 1**, held as under:

"19. 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 along with interest as imposed on the insured employer by the Workmen's Compensation 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 Compensation 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."

In view of the law laid down on this point, the workman shall be free to recover the penalty amount i.e. Rs.24,904/- from the employer i.e. respondent No.2 of this appeal alongwith 12% interest. With these modifications, this appeal is partly allowed. Record and proceedings of the trial Court be sent back forthwith.

Sd/-
(MOHINDER PAL, J.)

dharmendra