

By Speed Post

GOVT. OF NCT OF DELHI
BEFORE THE COMMISSIONER EMPLOYEE'S COMPENSATION
OFFICE OF THE DY. LABOUR COMMISSIONER
LABOUR DEPARTMENT (EAST & NORTH EAST DISTRICT)
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095

Dated: 05-07-21

NO.CEC-D/NE/10/2019/1726-1728

In the matter of:

Smt. Bhagwan Devi W/o Late Bhagwati
R/o Dabhaura, Shah Garh, Aligarh,
Shah Garh, U.P.-202129

... Claimant

V/s

1. Sh. Mahesh Kumar S/o Sh. Bhagwan Singh
R/o N/121, Gali No.5, Sadatpur Extension,
Karawal nagar, Delhi-110094

... Respondent no.1

Also at:

2. M/s State bank of India Gen. Ins. Co.
Through its Manager
7th B, Ground Floor, Opp. Rachna Cinema,
Rajendra Place, New Delhi.

... Respondent no.2

ORDER

1. That, in this case, claim petition was allowed vide order no. CEC-D/NE/10/2019/6150-6152 dated 02.02.2021. The Respondent no.2 was directed to pay death compensation of Rs.8,73,880/- along with simple interest @ 12% p.a. w.e.f. 11.09.2016 till its realization.
2. That, in the said order both Respondent no.1 and Respondent no.2 were directed for appearance on 18.02.2021 so as to why penalty should not be imposed under Section 4 (a) (3) (b) of the Employee's



Compensation Act, 1923 upon them for the default in paying the death compensation due under the Act within one month from the date it fell due to the Claimant. Thereafter, the matter was taken up on 18.02.2021. The claimant did not appear and both respondent no.1 and respondent no.2 appeared and filed their reply to Show-Cause Notice. Respondent no.1 in his reply has mentioned that the deceased expired in the accident caused by vehicle no. DL-1LV-5662 during the course of employment with them and, therefore, the claimant is entitled for death compensation from Respondent no.2 as the vehicle was insured with Respondent no.2. Respondent no.1 has also cited the judgements of Hon'ble High Court of Punjab and Haryana titled as Kamlesh and Ors. V.s Gyan Chand & Ors. ACJ 2016 case no. 2263 and the judgment of Hon'ble Supreme Court of India in case titled as Praveen Bhai V.s United India Insurance Co. ACJ 2015 wherein it was held that the penalty imposed by Commissioner @ 10% was enhanced to 15% and was payable by Insurance Co.

3. That respondent no.2 filed reply mentioning therein that the penalty should not be imposed upon them as per provisions of Section 4-A (3) of the Act and has cited judgement of Hon'ble Supreme Court of India in the case of Ved Prakash Garg vs Premi Devi and Ors. In C.A. No.15700 of 1996 decided on 25.09.1997 wherein it is held that the insurance company will not be liable to pay the penalty portion of the compensation in any manner and also held that "it will be open to the claimants to enforce their claims of penalty amounts with proportionate interest thereon against employer:, therefore, in view of the settled legal position, the penalty should not be imposed upon the Respondent no.2.



4. I have perused the material on record again. I am of the opinion that as per section 4-A of the Act, the employer shall make the provisional payment based on the extent of liability which he accepts. In the present case, the respondent no.1 has admitted the employer-employee relationship and occurrence of accident leading to death of the deceased but did not pay the compensation amount as the vehicle was insured with the respondent no.2. The respondent no.1 should have paid the compensation amount either in full or in part as an immediate relief to the dependents/ LRs of the deceased and should have reimbursed or claimed from the Insurance Co. which has not been done in this case. Since the respondent no.1 has admitted the employer-employee relationship and occurrence of accident leading to death of the deceased, therefore, a lenient view is taken and accordingly, a penalty equal to 10 % of the amount of compensation ordered in the order quoted above i.e. a penalty of Rs.87,388/- (Rupees Eighty Seven Thousand Three Hundred Eighty Eight only) is imposed upon the Respondent no.1. Therefore, Respondent no.1 is liable to pay the penalty of Rs.87,388/- and is directed to deposit Rs.87,388/- towards penalty through demand draft in favour of "Commissioner Employee's Compensation, District North-East" within a period of thirty (30) days from the date of issue of this order for further disbursement to the Claimant, failing to deposit the above said penalty amount, the above said amount shall be recovered as arrears of land revenue.

Given under my hand and seal of this court on ^{5th} day of ^{July} 2021



(K.M.SINGH)
Commissioner under
Employee's Compensation Act, 1923