

**BEFORE SH. S.C YADAV, COMMISSIONER  
(UNDER EMPLOYEES' COMPENSATION ACT, 1923)  
LABOUR DEPARTMENT, GOVT. OF N.C.T. OF DELHI  
5, SHAM NATH MARG, DELHI-110054**

No. WC/123/NW/08/I/14/431.

Dated: 12/03/2021.

IN THE MATTER OF:

**Sh. Gurmail Singh @ Gurmer @ Gurnal Singh**  
R/o Vill – Dubarji, P/O Adau Nangal,  
P/s – Mehta Chowk, Tehsil – Baba Bakala,  
Distt.- Amritsar, Punjab

..... Claimant/Petitioner

V/s

**Sh. Nachhattar Singh**  
M/s Delhi Brahmputra Roadways,  
54, Transport Centre, New Azadpur Sabji Mandi, Delhi

....Respondent No. 1

**M/s Bajaj Allianz General Insurance Co. Ltd.**  
Regional Office- C-31/32  
1<sup>st</sup> & 2<sup>nd</sup> Floor, Connaught Place,  
New Delhi – 110001

....Respondent No. 2

**ORDER**

1. Vide this order I will disposed of claim application dated 04/01/2019 filed u/s 4A of the Employee's Compensation Act, 1923 for the penalty.
2. The above case was decided vide order dated 14/05/2012 by the Commissioner Employees Compensation in favour of claimant and directing to insurance company respondent no 2 to deposit amount of compensation along with interest. Accordingly respondent no 2 insurance company M/s Bajaj Allianz General Insurance Company deposited an amount of Rs 7,40,552/- towards principle amount of compensation along with interest in this court on 27/06/2012 which is disbursed to the claimants. Further it is stated that as per section 4A(3)(b) of the EC Act, 1923 the claimant is also entitled to penalty to the extent of 50% of the principle amount. It is further submitted that the accident took place on 12/05/2008 and the principle amount of compensation was deposited by respondent No 2 on 27/06/2012 with this court. Against the order of Ld. Commissioner respondent No 2 Insurance Co. Preferred an appeal before the Hon'ble High Court of Delhi vide FAO No 330/2012 and the same was allowed and order of the Ld.



Commissioner was set aside by the Hon'ble court vide its judgement dated 15/05/2014. By being aggrieved the order dated 15/05/2014 passed by Hon'ble High Court claimant preferred a special leave petition before the Hon'ble Supreme Court of India vide SLP(C)13472/2015 titled as Sh. Gurmail Singh @ Gurmer @ Gurnal Singh v/s Bajaj Allianz General Ins. Co. Ltd & Anr. The Hon'ble Supreme Court was pleased to allow the SLP and set aside the judgement dated 15/05/2014 passed by the Hon'ble High Court of Delhi vide judgement dated 13/12/2018. It is further submitted that as per order/direction passed by Hon'ble High Court of Delhi coram Hon'ble Mr. Justice J.R Muddha, Show Cause notice has not yet been issued to the employer in the case titled as New India Assurance India Ltd V/s Puran Lal & Ors. In FAO No 385/2013 as such Show cause notice is mandatory to be issued to the employer as to why penalty be not imposed upon them. In this regard Ld. Counsel for petitioner relied upon the judgement of Hon'ble High Court of Delhi titled as Delhi Development Authority & Anr, V/d Raju @ Maya Ben & Anr. In FAO No 327/2014 is under challenge before the Hon'ble High Court of Delhi vide SLP No 5825/2018. On the same issue Hon'ble High Court of Delhi in case titled as the New India Assurance India Ltd. V/s Smt. Mainwati & Ors in FAO No 212/2013 the Hon'ble Court ruled that the proceedings under section 4A are the proceedings which commence after compensation being awarded on the main application being filed under Section 22 of the Act.

In view of above discussion in the last Ld. Counsel for petitioner submitted that as per section 4A(3)(b) of the Act and case Law of the apex court- Ved Prakash Garg V/s Premi Devi cited at 1998ACJ1 the claimants are also entitled for penalty to the extent of 50% of the principal amount of Rs 5,00,400/- which comes to Rs. 2,50,200/- and accordingly respondents be directed to deposited the penalty amount as permissible under the Act.

3. Show Cause notice dated 28/9/2020 was issued to the respondents with direction to show cause as to why penalty be not imposed u/s 4A of the Act. Respondent no 1 appeared and filed reply wherein it is submitted that after taking all the factors in consideration this court has directed respondent no 2 Insurance Co. To deposit Rs. 5,00,400/- with Commissioner along with 12% interest PA after 30 days from the date of accident till its realization, as such R2 is liable to pay penalty if any under the Act as such application in question does not maintainable against the respondent no 1.
4. Neither Respondent No.2 appeared nor filed reply despite given sufficient opportunities.





5. Today matter is fixed for the final arguments. Submission adduced by both the Ld. Counsels heard in length. Ld. Counsel for R1 submitted that in main order for payment of compensation was given against R2 Insurance Co. then application u/s 4A is also maintainable against R2 Insurance Co., because by considering all the facts of the case main order dated 14/05/2012 was passed against R2 Insurance Co. to indemnify the compensation amount. As such R1 is not liable and be not held for payment of penalty u/s 4A of the Act.
6. From the facts of the case it is clear that compensation was paid to petitioner only after the order of the Commissioner Employee's Compensation by R2 Insurance Co..
- In view of above considering all the facts it has been proved that R2 Insurance Co. Despite having knowledge of accident did not discharge its responsibility u/s 4 of the Act, while vehicle in question was insured with them as such respondent no.2 Insurance Co. is liable to pay penalty to claimant as per section 4A(1)(b) of the Act.
7. As such I am agreed with the argument adduced by Ld. Counsel for R1 and accordingly I hold that Ins Co. R2 is liable to pay penalty to the extent of 50% of awarded amount to the petitioner.
8. Accordingly Respondent No 2 M/s Bajaj Allianz General Insurance Co. Ltd. is directed to deposit 50% penalty of amount of Rs. 500400/- which comes Rs. 2,50,200/- within 30 days from the date of order by way of DD in favour of Commissioner Employees Compensation, failing which same shall be recovered u/s 31 of the EC, Act 1923 as an arrear of land-revenue.
9. Accordingly order is announced in the open court today.
10. Given under my hand and seal of this Authority on this 11<sup>th</sup> day of March, 2021.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

