

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 WCD/07/CD/2018/ 52.

Dated: 24/05/2024.

IN THE MATTER OF:

Smt. Barkha & Ors.

R/o H. No. 5657/20, Gali Hanuman Mandir,
Nabi Karim, Pahar Ganj, Delhi-110055

..... Claimant

V/s

1. Sh. Sanjay S/o Sh. Tilak Raj

R/o 5954, Gali No. 15, Nabi Karim,
Pahar Ganj, Delhi-110055

2. M/s. Kotak Mahindra General Ins. Co. Ltd.

H/78, 7th Floor, 23, Himalaya House,
Kasturba Gandhi Marg, New Delhi-110001

..... Respondents

ORDER

1. By this order, I will dispose of issue of penalty in this Matter.
2. The issue is limited in this case to the extent of penalty u/s 4A of the Act. Show Cause Notice bearing no. WCD/07/CD/2018/452 dated 30.01.2024 was issued to the respondents to show cause as to why penalty be not imposed upon them under section 4-A (3) (b) of the Employees Compensation Act, 1923. This case has been decided vide order dated 29.01.2024 holding entitlement to the claimants to received death compensation amounting Rs. 7,97,600/- alongwith 12% simple interest w.e.f. 05.03.2018 till its realization with direction to Respondent No. 2 to deposed the ordered amount within 30 days the Commissioner Employees Compensation by way of demand draft.
3. In reference to the Show Cause notice dated 29.01.2024, for respondent no. 1 Ms. Sakshi Batra, Advocate was present and had filed reply. For Respondent No. 2 Insurance Company neither no one appeared nor filed any reply in regard Show Cause Notice in question, despite given 03 dates i.e. 12.02.2024, 27.02.2024, 19.03.2024 and 09.04.202. In view of this right of Respondent No. 2 to file reply was closed on 09.04.2024.



4. Respondent No. 1 has stated in reply that Respondent No. 1 is not liable to pay any penalty as per section 4-A (3) (b) of the Employees Compensation Act, 1923 as respondent No. 1 has from the day one has informed to the Respondent No. 2 that the deceased was carrying the valid Driving License and had met with the accident while he was in duty. After considering the facts of the case Hon'ble Commissioner has passed the order against Respondent No. 2 i.e. Insurance Company to deposit ordered amount Rs. 9,97,600/- along with 12 % interest. It is further stated that since vehicle in question was completely insured and was having all necessary/required documents of the vehicle in question which are necessary to running the vehicle on road at the time of accident. Therefore, Respondent No. 1 is no fault as the penalty should not be imposed upon them. It was the duty of Respondent No. 2 to pay compensation to the claimants being the dependants of the deceased at the earliest to avoid any penalty.
5. Despite given sufficient opportunities to Respondent No. 2 i.e. Insurance Company to file reply in regard Show Cause Notice in question but despite receipt of the same no reply has been filed. As per reply of the Respondent No. 1 owner of the vehicle, Respondent No. 2 was having knowledge of accident from the date of accident but despite this they have not taken any steps regarding payment of compensation to the dependants of the deceased and therefore, from the in-active on the part of Respondent No. 2 Petitioners compel to file this claim unnecessarily.
6. In view of above it is proved that Respondent No. 2 i.e. M/s Kotak Mahindra General Insurance Company Limited failed to discharged his statutory duties. In view of this Respondent No. 2 is liable to pay 50 % penalty of awarded amount to the claimants under section 4 A (3) (b) of the Employees Compensation Act, 1923.
7. In view of above Respondent No. 2 i.e. M/s Kotak Mahindra General Insurance Company Limited is directed to deposit 50 % penalty of **Rs. 7,97,600/-** which comes **Rs. 3,98,800/- (Rupees Three Lakhs Ninty Eight Thousand Eight Hundred)** by way of demand draft in favour of "Commissioner Employees Compensation" within 30 days from the date of order, failing, which shall be recovered as per provisions of the Act.
8. Given under my hand and seal of this Authority on this 24th day of May, 2024.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

