

**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/27/ND/2015/ 62.

Dated: 31/05/2024.

IN THE MATTER OF:

Sh. Shiv Kumar @ Shiv Singh,
S/o Sh. Bhagwan Singh,
R/o Village & Post - Pingri Farha Mathura,
P.S. Farah, Tehsil & District - Mathura,
Uttar Pradesh - 281122

Also at:

Shop No. 23, Khanna Market,
Behind Tis Hazari Courts,
Delhi - 110054

.....Applicant/Claimant

VERSUS

1. **Sh. Rajendra Mawai,**
S/o Sh. Ram Kishan,
R/o House No. D.C. 1655, Dabua Colony,
N.I.T, Faridabad, Haryana - 121001

Also at:

House No. 1937, Sector - 23A,
Faridabad, Haryana - 121001

2. **M/s Magma HDI General Insurance Company Ltd.**
2nd Floor, Unit No. A-2, Kirti Nagar,
Main Najafgarh Road, Near Kalra Hospital,
New Delhi - 110015

.....Respondents

ORDER

1. Vide this order, I will dispose of the application dated 01.03.2023 of the applicant/claimant seeking the relief of remaining part of interest and penalty as per Section 4A of the Employee's Compensation Act, 1923.
2. That the above captioned claim petition was filed by the applicant/claimant seeking injury compensation.



3. That the same was decided by the then Ld. Commissioner vide his order dated 05.06.2017 decided the above captioned claim petition in favour of applicant claimant and awarded Rs. 10,33,344/- as injury compensation with interest at the rate of 12% per annum w.e.f. 19.10.2013. But issue of penalty was not even touched by the Employees Compensation Commissioner though in the claim application the applicant had prayed for grant of penalty also but no Show Cause Notice was issued.
4. That the above order dated 05.06.2017 was challenged by the Respondent no. 2/Magma HDI General Insurance Co. Ltd. before the Hon'ble High Court of Delhi vide FAO No. 358 of 2017. The said FAO was decided by the Hon'ble High Court vide its judgment dated 23.05.2018, whereby the Hon'ble Court set aside the order of the Ld. Commissioner and dismissed the claim petition of the applicant.
5. That thereafter being aggrieved from the judgment of the Hon'ble High Court the applicant filed an SLP vide SLP No. 24885 of 2018 before the Hon'ble Supreme Court of India. The said SLP was decided by the Hon'ble Supreme Court vide its judgment dated 23.08.2022 whereby the Hon'ble Supreme Court was pleased to set aside the order dated 23.05.2018 passed by the Hon'ble High Court and the order dated 05.06.2017 passed by the Ld. Commissioner was restored by the Hon'ble Supreme Court of India.
6. That the applicant has filed applications seeking remaining interest and penalty. In the application he has stated that he had received the compensation amount on 30.11.2022 and as per the direction of the Hon'ble Supreme Court the applicant is entitled to receive 12% interest till its realization. Therefore, the applicant is entitled to receive the compensation as per his entitlement along with penalty also.
7. That as on date the applicant had not received the complete amount as per his entitlement. Hence as per the provisions the appropriate order and directions may please be issued against the Respondent no. 2/Insurance Company to pay the compensation amount as per



the order of the Hon'ble High Court in Brijesh Kumar Verma Vs. Aurangjeb & Anr., FAO 345 of 2016 decided on 24.05.2018.

8. That the calculation sheet as per the directions of the Hon'ble High Court in Brajesh Kumar Verma Vs. Aurangjeb & Anr., FAO no. 345 of 2016, decided on 24.05.2018 –

Principal Awarded amount	Rs. 10,33,344/- with interest at the rate of 12% per annum w.e.f. 19.10.2013
Interest till date of realization i.e. 30.11.2022	Rs. 11,26,345/-
Total amount as per entitlement	Rs. 21,59,689/- Approx.
Amount received by claimant vide disbursement order dated 30.11.2022.	Rs. 19,22,888/-
Appropriation of amount	(Rs. 21,59,689) – (Rs. 19,22,888) Remaining to paid = Rs. 2,36,801/- approx.

9. That given the above facts and circumstances the applicant sought directions to the Respondent no. 2/Insurance Company to deposit the amount of compensation as above. He has prayed that the present application of the applicant/claimant may please be registered, considered and allowed by issuing directions to the Respondent no. 2 to deposit the remaining compensation amount of Rs. 2,36,801/- (Aprox) plus interest at the rate of 12% per annum till date of payment as per the provisions of Act as also in the interest of justice.
10. He has further sought that he was entitled to compensation within 30 days of the accident. He did not receive compensation till 30.11.2022 when he received an amount of Rs. 19,22,888/-. In the given situation when his entitled has been delayed by more than 9 years. Hence, he has prayed that his request for imposing penalty as per Section 4A(3)(b) of the Act deserves to be considered and allowed in the interest of justice.



11. Respondents have denied that the applicant is still entitled to any compensation. Respondent No. 1 has stated that he was not duly served by this authority, by the High Court and by the Hon'ble Supreme Court hence this order as has been passed by my predecessor, by the Hon'ble High Court and The Hon'ble Apex Court be not considered for relief to the applicant and the application of the applicant be dismissed. Respondent No. 2 has also stated that the applicant is not entitled to any further relief in the form of remaining interest and penalty. The contention of the Respondents are not considered at this stage since matter has already been decided by Apex Court.
12. The claimant has stated that Rs. 19,22,888/- has been received by him on 30.11.2022. His entitlement (injury compensation and interest thereon as per the Hon'ble Supreme Court Judgment) comes to Rs. 21,59,689/-. Section 4A(3)(b) of the Act which speaks as under:-

“ 4-A. Compensation to be paid when due and penalty for default –

1. Compensation under section 4 shall be paid as soon as it falls due.
2. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the (Employee), as the case may be, without prejudice to the right of the (employee) to make any further claim.
3. Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall –
 - (a) Direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve percent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and



(b) If, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty percent of such amount by way of penalty:

4. If, in his opinion, there is no justification for the delay,

Direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty.

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

13. The counsel for the insurance company has argued that this is the liability of the employer not the insurance company. The counsel for the applicant has drawn my attention towards the law settled by the Hon'ble Apex Court in – Ved Prakash Garg vs. Premi Devi – 1998 ACJ 1 - . In the cited case the Hon'ble Supreme Court has held where the insurance company has charged additional premium, they shall be liable for penalty as well. The operative part of the Judgement is read as under:

“18. In the case of United India Insurance Co. Ltd. v. Roop Kanwar & ors. (supra) a learned Single Judge of the Rajasthan High Court had to consider a situation where on payment of additional premium the insurance company had agreed in the light of endorsement no.16 of the Policy to cover all liabilities incurred by the insured under Workmen's Compensation Act. In view of this contractual coverage of liability the insurance company in that case was held liable to meet the claim of penalty and interest as imposed upon the insured under Section 4A(3) of the Compensation Act. This judgment proceeded on its own facts and was concerned



with a situation converse to the one as was examined by the Karnataka High Court in Oriental Insurance Co. Ltd. v. Raju & Ors. (supra)".

14. I have read the Policy and in that an additional premium under W.C. Act has been charged. Hence this is a case covered by that part of the judgment upholding the Judgment by the Rajasthan High Court in United India Insurance Company Ltd. Vs. Roop Kanwar. Hence, I hold the insurance company to be liable for penalty amount to the tune of Rs.10,79,844/- (50% of Rs.21,59,689/- as awarded by the Commissioner Employees Compensation in this case).
15. I have considered the application and response of the opposite parties. This is an admitted fact that the applicant met with an accident. The said fact has been upheld by the Hon'ble Apex Court. The police report has been lodged and subsequent treatment was taken by the applicant. After considering all these facts, the Hon'ble Apex Court has upheld his entitlement. Admittedly the accident took place on 19.10.2013 and the amount has been received by the claimant on 30.11.2022 i.e. after a period of about 09 years. I find it a fit case for imposing penalty and I therefore order to impose a penalty to the extent of 50% on the amount of Rs.21,59,689/- which comes to Rs.10,79,844/-.
16. Respondent No. 2 is directed to deposit an amount of Rs.2,36,801/- as remaining amount of interest and Rs. 10,79,844/- as penalty with this court in favour of Commissioner, Employee's Compensation, within 30 days failing which the same shall be recovered as per provisions of law.
17. Given under my hand and seal of this Authority on this 31/5 day of May, 2024.

(S.C. Yadav)
Commissioner

Employee's Compensation Act, 1923

