

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.ECD/121/NW/18/471.

Dated: 23/02/2024.

IN THE MATTER OF:

Mrs. Kanta W/o Lt Balwan Singh
R/o A-82, Block-A,
Gulab Bagh, Uttam Nagar,
D.K Mohan Garden, West Delhi - 110059

.....Claimant

Versus

- 1. Sh. Gurvinder Kapoor S/o Kulwant Singh**
BU-56, Vishakha Enclave
Pitampura, Delhi - 110034
- 2. M/s Universal Sompo Gen. Ins. Co. Ltd.**
Plot No EL-94, KLS Tower,
TTC Industrial Area,
MIDC Mahape, Navi Mumbai - 400710

Also at:

Office No. - 903 & 904, 9th Floor,
B-08, GDTL, Netaji Subhash Place,
Pitampura, New Delhi - 110034

.....Respondents

ORDER

1. This claim petition was disposed of vide order No. ECD/121/NW/18/1188 dated 07/10/2021. Aggrieved by this order the claimant filed an appeal vide FAO bearing No 265/2021 before the Hon'ble High Court of Delhi. Hon'ble High Court of Delhi vide order dated 05/12/2023 set aside impugned order dated 07/10/2021 and remanded back the matter with directions to assess the quantum of compensation payable to the claimants within period of 02 months and an compliance report in this regard be filed on before 28/02/2024.
2. The matter was fixed for deciding the quantum of compensation payable to the claimants and the same has been decided by this Authority vide order dated 22/01/2024.
3. Further the matter was listed for deciding the issue of penalty. A show cause notice dated 24/01/2024 u/s 4A(3)(b) was issued to the respondents with direction to file written statement in response to the show cause notice as to why penalty as prayed in the claim application should not be imposed upon them.



4. Respondent no. 1 on 08/02/2024 filed reply/WS in respond to the show cause notice an stated therein that "no penalty should be levied upon the answering respondent no. 1. Section 2(1)(C) of the EC Act defines compensation. That would mean the compensation payable under Section 3 that can be awarded under Section 4 of the Employees Compensation Act. The liability under section 12 can be fastened against the principal employer to the extent of compensation. However, the interest and penalty can be awarded only towards the default of employer to deposit compensation amount in terms of statutory requirements within the specified period. The fundamental liability of the employer is to deposit compensation within one month from the date when it becomes due. It is submitted that respondent no.1 paid EX-Gratia Payment to the widow to the tune of Rs30,000/- at the time of accident. The truck was insured with respondent no.2 and since the accident took place, the respondent no.2 (Insurance Company) was liable to pay the compensation in first go. The respondent no.1 himself previously moved the application for seeking the impleadment of the Insurance Company in the Petition filed earlier by the widow as the Insurance Company was liable to pay any compensation. The petition filed earlier was dismissed by this Office on merits and the said order was set-aside by the Hon'ble High Court of Delhi and the Hon'ble High Court directed the respondent no.2 to pay the compensation and remanded the case back for computation of compensation. In these circumstances, the respondentno.1 cannot be asked to pay penalty as there has been no default on the part of the employer (respondentno.1).The respondent no.1 is placing the recent judgement of Bombay High Court in case titled as Chief Executive officer Versus Smt Suraiyya Rafik Khalifa & Ors. The said judgement is identical to the facts of the present case and the Hon'ble Bombay High Court was pleased to hold that principal employer cannot be compelled to pay interest and penalty as he has not made any default in making the payment of compensation. That the respondent no.1 is also relying upon the judgement titled as National Insurance Co Limited Versus Mubasir Ahmed & Anr. Wherein the Hon'ble Supreme Court was pleased to held that "The Starting point is on completion of one month from the date on which it fell due. Obviously it cannot be date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A(1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of the adjudication of the claim made. The adjudication under section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when the employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise". In the last the answering respondent No.1 submits that there has been no willful default in making the payment of compensation in the present case. Since the vehicle involved in accident was duly insured and since the liability to pay the compensation has been adjudicated by the Hon'ble High Court upon the respondent no.2. There has been no willful dis-obedience or non compliance of the relevant provisions on



the part of the respondent no.1 and further requested for withdrawal of the show-cause notice issued and in view of the peculiar facts and circumstances of the present case, it is prayed that Hon'ble Office should not impose any penalty upon the answering respondent no.1.

5. Further sufficient opportunities were provided to the respondent no. 2 to file reply in response to the show cause notice, but despite given 02 dates neither the respondent no. 2 insurance company appeared nor filed any reply.
6. Today i.e. 15/02/2024 also matter was fixed for reply of respondent no. 2 and arguments if any, but despite 2 calls none appeared for respondent no. 2 for filing reply in the matter. As such it appears that respondent no. 2 does not want to say anything in this regard.
7. Further the submissions adduced by the counsel for claimant and respondent no. 1 heard in detail on the issue of penalty.
8. Keeping in view the facts and circumstances and taking all materials into consideration and reply of respondent no. 1 and the judgements filed by the respondent no. 1 in support of their written statement, I am of the view that since the whole matter has been decided by Hon'ble High Court in the matter regarding entitlement of the compensation and fastened liability of the payment of compensation upon respondent no. 2 insurance company and in compliance of direction of Hon'ble High Court of Delhi in FAO No. 265/2021 dated 05/12/202, this Authority has decided quantum of compensation payable to the claimants, in view of this it will be appropriate that payment of penalty to be imposed upon respondent no. 2 insurance company since despite show cause notice respondent no. 2 neither filed any reply nor objected the show cause notice as such I impose 25% penalty of the principal amount i.e. Rs. 4,26,080/- on the respondent No. 2 insurance company.
3. Accordingly respondent no. 2 insurance company i.e. **M/s Universal Sompo Gen. Ins. Co. Ltd.** is directed to **deposit Rs. 1,06,520/- as 25% penalty of awarded amount within 30 days** from the date of order by way of Demand draft in favour of "Commissioner employees Compensation", failing, which same shall be recovered as per provision of the Act.
9. Given under my hand and seal of this Authority on this 23rd day of February, 2024.

(S.C. Yadav)
Commissioner

Employee's Compensation Act, 1923

