

**Satya Kumar Vs. Smt. Sumitra Devi and ors.**

**Satya Kumar Vs. Smt. Sumitra Devi and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/1130610](http://sooperkanoon.com/1130610)

**Court :** Delhi

**Decided On :** Feb-25-2014

**Judge :** Valmiki J. Mehta

**Appellant :** Satya Kumar

**Respondent :** Smt. Sumitra Devi and ors.

**Advocate for Pet/Ap. :** Mr. M.S. Yadav

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO No.178/2013 25th February, 2014 % SATYA KUMAR Through: ..... Appellant Mr. M.S. Yadav, Advocate. Versus SMT. SUMITRA DEVI AND ORS. Through: ..... Respondents CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This first appeal is filed under Section 30 of the Employees Compensation Act, 1923 (hereinafter referred to as the Act) impugning the order of the Commissioner dated 29.1.2013 passed under Section 4A of the Act with respect to imposition of penalty of 50% of the compensation amount upon the appellant/employer.

2. The provision of Section 4A of the Act is invoked after the main compensation proceedings are decided, proceedings under Section 4A are so as to take a decision as to whether claimants are entitled to interest and penalty for delay in

payment of compensation and which compensation has to be paid within 30 days of the accident for penalty and interest not to be payable.

3. By the impugned order, the Commissioner has ordered the insurance company/respondent no.4 herein to pay interest, but has directed that payment of penalty will be on the appellant/employer (respondent no.1 before the Commissioner) alone on the ground that it was the appellant who had failed to inform the insurance company on time for liquidating the liability and therefore only the appellant will be liable to pay penalty. The relevant observations of the Commissioner in this regard read as under:

That after examination/perusal of the pleadings/documents/replies etc of the respondents, it is found that the justification/ reasons given by the respondents are not sustainable and as such as per the provisions of the Workmens Compensation Act, 1923, the claimant/s are entitled for the interest amount @ 12% simple interest and penalty as provided under the Act and rules made there-under. Further, as far as liability of making the above payments of interest and penalty is concerned, the same is decided as follows: That the vehicle was duly insured and as such the liability of payment of compensation was of Respondent No.2 i.e. Insurance Co. Now, had the insurance company received the intimation about the accident in time/earlier, they would have made the payment early, which they made after a period of about 3 years on filing of the case, Meaning thereby that the due compensation amount remained with/ in the account of the insurance company which obviously is utilized by them for its business or have earned interest on the same. Therefore, it is decided that the interest on the principal amount of compensation i.e. Rs. 3,29,925/- @ 12% @ w.e.f. 21-8-05 to 18-6-08 amounting to Rs 1,12,175/-, shall be paid by the respondent No.2M/s National Insurance Co. Ltd. to the claimant/s. That as far as, the penalty is concerned, the respondent has failed to prove that he had informed the insurance co-respondent No.2 in time about the accident as a result of w3hich the compensation to the claimant could not be paid in time by the insurance company. It is, therefore, proved that due to the negligence on the part of respondent no.1, unwanted delay in payment of compensation has been caused. Therefore, it is decided that the penalty of Rs. 1,64,963/- which is equal to 50% of principal amount i.e. R.

3,29,925/- shall be paid by Sh. Satya Kmar- respondent No.1. That as decided above, the respondent No.1 is directed to deposit the payment of penalty for Rs. 1,64,963/- and respondent No.2 is also directed to deposit the payment of interest for Rs. 1,12,175/- as calculated. Mentioned above, in this court through Demand Draft/pay order in favour of COMMISSIONER, EMPLOYEES COMPENSATION - IX within 30 days, for further disbursement to the claimant Sh. Pankaj Kumar, failing which proceedings to recover the aforesaid amount of interest and penalty, as an arrear of the land revenue, shall be initiated.

4. On repeated queries to the counsel for the appellant, the counsel could not point out any letter which was duly received by the insurance company whereby the insurance company was informed of the requirement of payment of the compensation to the claimants before the Commissioner. Also, no pleadings before the Commissioner are filed showing that by a particular letter, insurance company was informed. Reliance is only placed on behalf of the appellant on the FIR which is lodged, however, lodging of an FIR is not a notice to an insurance company to make payments under the insurance policy.

5. I also put on record the fact that it is not known from the proceedings before the Commissioner or before this Court whether insurance company contractually agreed to take over the entire liability including for penalty in terms of the insurance policy without it not having given any notice. Since the proceedings before the Commissioner are not inter se proceedings between the employer and the insurance company, liberty is granted to the appellant/employer to recover the amount of penalty by filing appropriate proceedings from the insurance company if the insurance policy was a comprehensive policy by which the insurance company had taken over liability also with respect to payment of penalty.

6. In view of the above, there is no merit in the appeal, and the same is therefore dismissed subject to the above observations, leaving the parties to bear their own costs. FEBRUARY 25 2014 Ne FAO No.178/2013