

(1998) 02 P&amp;H CK 0019

**High Court Of Punjab And Haryana At Chandigarh****Case No:** L.P.A. No. 645 of 1997National Insurance Company  
Ltd.

APPELLANT

Vs

Suresh Pal and another

RESPONDENT

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**Date of Decision:** Feb. 13, 1998**Acts Referred:**

- Employees Compensation Act, 1923 - Section 3, 4A

**Citation:** (1999) 1 ACC 605 : (2000) ACJ 172 : (1999) 1 LLJ 474 : (1998) 120 PLR 228**Hon'ble Judges:** V.S. Aggarwal, J; Amarjeet Chaudhary, J**Bench:** Division Bench

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**Judgement**

V.S. Aggarwal, J.

The present Letters Patent Appeal is directed against the judgment of the learned Single Judge dated August 26, 1997. The learned Single Judge of this Court relying upon the decision of this Court in Letters Patent Appeal No. 224 of 1996 dismissed the F.A.O. filed by the National Insurance Company Limited (hereinafter described as "the appellant").

2. The relevant facts are that respondent Suresh Pal submitted his claim application asserting that he was engaged by Naresh Kumar as driver of his vehicle. The same was being used as a taxi. On April 20, 1992 while he was on duty and driving the above-said vehicle, he reached near Sardar Cold Storage on Jagadhari Road and met with an accident with the result that his right leg from thigh to ankle was completely damaged. Asserting his age to be of 26 years and that he has suffered permanent disability of his right leg, he claimed Rs. 1,00,000/- as compensation along with penalty of Rs. 50,000/-. The claim contested and the Commissioner under the Workmen's Compensation Act at Yamunanagar burdened the appellant with compensation and also penalty to the extent of 20% of the amount of compensation in view of Section 4-A of the Workmen's Compensation Act besides interest upto the date of realisation of the claim.

Aggrieved by the same, the appellant preferred First Appeal against Order (FAO). The learned Single Judge on August 26, 1997 dismissing the appeal recorded as under :-

"The only contention raised in this case is that the Insurance Company is not liable to pay interest and penalty. I find no merit in this case. The matter is purely covered by decision rendered in L.P.A. No. 224 of 1996 by a Division Bench of this Court. Accordingly, there being no merit in this appeal the same has to be dismissed and it is so ordered."

Aggrieved by the same, present Letters Patent Appeal has been filed.

3. The sole contention raised before us was that the appellant was not liable to pay the penalty. In this regard reliance was placed upon the decision of the Supreme Court in the case of Ved Prakash Garg v. Premi Devi and others 1998 I LLJ 363. One of the questions before Supreme Court was as to whether the Insurance Company was liable to reimburse the penalty amount or not, the Supreme Court answered the same in the negative and held that the Insurance Company would not be liable to reimburse the penalty it would be the liability of the insured employer alone. The precise answer was given in paragraph 24 of the judgment which reads as under :-

"As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the Insurance Company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Compensation Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A sub-section (3)(a) of the Workmen's Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Compensation Commissioner u/s 4-A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone."

Keeping in view the pronouncement of the Supreme Court, the answer is obvious that Insurance Company is not liable to reimburse the penalty amount.

4. On behalf of the respondent it was pointed that the Commissioner has calculated penalty and interest as a lump sum amount but in this regard the said contention is totally devoid of any merit. A perusal of the order passed by the Commissioner under the Workmen's Compensation Act clearly shows that he had allowed 20% of the amount of compensation as penalty. The interest had to be awarded separately, if any. It is the said amount which the appellant is not liable to pay. This conclusion is fortified by the fact that the total compensation awarded is Rs. 42,714/- and 20% of the same would be Rs. 8543/- which would be the penalty. Therefore, the appellant is not liable to pay the penalty of Rs. 8543/-.

5. As an off-shoot of the reason, the Letters Patent Appeal is allowed. The judgment of the learned Single Judge is set aside and it is directed that the appellant will not be liable to pay the penalty amount of Rs. 8543/-.