

(2008) 04 DEL CK 0162

Delhi High Court

Case No: FAO No. 93 of 2004

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Joginder Kaur and Others

RESPONDENT

Date of Decision: April 7, 2008

Acts Referred:

- Workmens Compensation Act, 1923 - Section 4A, 4A(3)

Hon'ble Judges: Pradeep Nandrajog, J

Bench: Single Bench

Advocate: Pradeep Gaur and Amit Kumar Pandey, for the Appellant; Rekha Aggarwal, for Respondents 1 to 4, for the Respondent

Final Decision: Allowed

Judgement

Pradeep Nandrajog, J.

Heard learned Counsel for the parties.

2. Two contentions are urged by the appellant in appeal. It is firstly urged that the decision of the Hon'ble Supreme Court dated 6.11.1996 in Civil Appeal No. 16904-06/1996 New India Assurance Co. Ltd. v. V.K. Neelakandan was overruled by the Hon'ble Supreme Court in the decision reported as Kerala State Electricity Board and Another Vs. Valsala K and Another, Accordingly, counsel urges that the monthly income of the deceased had to be kept at Rs. 2,000/- being the amount stipulated u/s 4A of the Workmen's Compensation Act 1923 as on the date of the accident i.e. 13.10.2000.

3. The second contention urged is that u/s 4A(3) liability qua the penalty levied cannot be fastened on the insurance company.

4. Happily for me, learned Counsel for the respondent concedes to both points urged by learned Counsel for the appellant. Thus I am not called upon to pen down a lengthy judgment.

5. Suffice would it be to note that a 4 Judge Bench of the Hon"ble Supreme Court, vide decision reported as [Pratap Narain Singh Deo Vs. Srinivas Sabata and Another](#), held that liability to pay arises on the date of the accident and the statutory provisions in force as on date of accident would determine the compensation to be paid.

6. A 2 Judge Bench in Neelakandan"s case held to the contrary, but unfortunately, decision of the 4 Judge Bench in Pratap Narayan Singh Deo"s case was not considered. Hon"ble Supreme Court revisited the law in Valsala"s case (supra) and clarified that the correct law to be applied would be as declared in Pratap Narayan Singh Deo"s case. Meaning thereby, the computation has to be with reference to income and limits thereof stipulated u/s 4A as on date of the accident.

7. Noting the decision of the Hon"ble Supreme Court reported as [Ved Prakash Garg Vs. Premi Devi and others](#), decided on 23.11.2007 it has been held that liability to pay the penalty cannot be fastened on the insurance company and had to be that of the employer.

8. The appeal is accordingly allowed with respect to the first two points. The effect thereof would be that the compensation held payable stands reduced from Rs. 3,94,120/- to Rs. 1,97,060/-.

9. This would be the amount payable by the insurance company apart from interest.

10. I also declare that the insurance company would not be liable to pay the penalty. The same would be the liability of the employer. For benefit of the Commissioner Workmen"s Compensation I would be failing if I do not record that consequent to the present order would be a correction in the 50% penalty which also would require to be halved as and when the same is sought to be recovered in execution proceedings initiated by the claimants.

11. Appeal stands disposed of.

12. No costs.