

(2004) 06 BOM CK 0125**Bombay High Court****Case No:** First Appeal No. 381 of 1998

Shri Pradeep Surajbhan Agrawal

APPELLANT

Vs

Shri Bapu Krishna Yedava, Sou.
Phulabai Bapu Yedava and The
United India Insurance Co. Ltd.

RESPONDENT

Date of Decision: June 11, 2004**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 140

Citation: (2005) 1 ACC 76 : (2004) 4 BomCR 526 : (2005) 104 FLR 156**Hon'ble Judges:** Nishita Mhatre, J**Bench:** Single Bench**Advocate:** R.V. More, for the Appellant; T.S. Ingale, for the Respondent**Judgement**

Nishita Mhatre, J.

This Appeal has been filed under Workmen's Compensation Act. The only question involved is whether the employer can be saddled with liability of payment of interest and penalty when an insurance policy was in existence on the relevant date.

2. The accidental death occurred on 7.3.1990. The parents of the deceased filed an application under the Workmen's Compensation Act claiming compensation as the appellant was the owner of the truck No. CNB 5694 as also the employer of the deceased. The application was allowed after; evidence has been recorded. The Commissioner came to the conclusion that the compensation payable is an amount of Rs. 10,548/- The amount awarded by way of an interim relief on 16.8.1990 in the interim application filed u/s 140 of the Motor Vehicles Act for no fault liability should be deducted. The insurance company had deposited the amount of Rs. 25,000/- on 16.8.1990 as awarded by the Commissioner on 23.5.1990.

3. Mr. More, learned Advocate for the Appellant, submits that in any event the employer should not be liable to pay the interest on the compensation. He relies on

the judgment in the case of L.R. Ferro Alloys Ltd. Vs. Mahavir Mahto and Another . There is no doubt that this judgment is applicable to the facts of the present case. The employer is not liable to pay interest on the compensation when admittedly the insurance policy was in operation.

4. As regards the penalty, Mr. More submits that there is no justification for awarding any penalty much less the maximum penalty. He submits that the Commissioner ought to have taken into consideration the fact that the owner that is the appellant herein informed the insurance company of the accident. He also urges that the Commissioner ought to have taken into consideration the fact that Rs. 25,000/- had been deposited by the insurance company on 16.5.1990. Not having done so, the learned Advocate submits that the Commissioner should justify the imposition of 50% by way of penalty.

5. On a perusal of the evidence and the judgment impugned, I see no reason to set aside the same in respect of the penalty awarded. Except a bald statement being made by the employer that he had informed the insurance company, there is nothing on record to show that such an information was given to the insurance company. Moreover, the primary liability is that of the owner and the owner can be indemnified by the insurance company. The scheme of the Act is not that the workman or the injured should wait for the liabilities of the owner, insurance company to be sorted out before any compensation is paid. The employer is required to deposit the amount at least within one month when it falls due. Not having done so, the appellant cannot now seek any indulgence and submit that 50% of penalty should not be imposed.

6. Appeal is allowed partly. The interest awarded shall be paid by the Insurance Company.

7. All interim orders vacated. The penalty awarded shall be paid by the Appellant within eight weeks from today.

9. Certified copy expedited.