IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 17th OF NOVEMBER, 2026

MISC. APPEAL No. 4677 of 2024

CNR No.: MPHC020208672024

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD.

Versus

MAMTABAI AND OTHERS

Appearance:

Shri Monesh Jindal - Advocate for the appellant.

None for the respondents, though served.

ORDER

This Miscellaneous Appeal under Section 30 of the Employee's Compensation Act, 1923(hereinafter referred to as the "Act of 1923") has been filed by the appellant/Insurance Company being aggrieved by the order dated 05.04.2024 passed by Commissioner for Workmen's Compensation, Labour Court, Mandsaur in Case No. 05/2020/WCF whereby the survivors of the deceased Kamal have been awarded compensation of Rs.7,90,740/- along with penalty, cost and interest @12% p.a.

2. The short facts of the case are that on 24/06/2018 Kamal was driving the tractor bearing number MP-14AB-3479 owned by respondent no. 5 under his employment and Shrawan was sitting over the tractor. When the said tractor was working in the field of Sanju, suddenly the tractor fell down in the well and as a result of which Kamal died. A claim petition bearing

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number 05/2020/WCF was filed by the claimants/survivors of the deceased Kamal claiming compensation of Rs.8,39,680/- The learned Commissioner after framing the issues and recording the evidence passed the impugned order directing the appellant/Insurance Company and respondent no.5/owner to pay compensation of Rs.7,88,240/- to the claimants. Being aggrieved by the impugned order the appellant/Insurance Company has filed this appeal before this Court.

3. The appeal is admitted on the following substantial questions of law:-

(i) Whether the learned Commissioner has rightly held liable appellant/Insurance Company for payment of compensation amount despite the fact that the earlier policy on the basis of which the current policy of the offending vehicle has been issued was found to be fake and therefore the current insurance policy was *void ab initio*?

(ii) Whether the Insurance Company has rightly held liable despite the breach of fundamental terms and conditions of the insurance policy of the offending vehicle?

(iii) Whether the Insurance Company under the policy issued for offending vehicle can be held liable for payment of penalty and interest too?

4. Heard learned counsel for the appellant for final disposal of the appeal.

5. It is submitted by the learned counsel for the appellant that an insurance policy issued in this case Ex.D-7 in respect of tractor bearing

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registration no.MP-14-AB-3479 but this policy has been issued on the earlier policy Ex.D-6 which was found to be fake on verification from the Insurance Company concerned who allegedly has issued this policy. In this regard the verification report is Ex.D-8. Consequently, the policy Ex.D-7 is *void ab initio* and the Insurance Company has no liability to pay the compensation. However, the learned Commissioner has rejected the contention in this regard on behalf of the Insurance Company on the ground that no notice has been issued by the Insurance Company to the owner of the vehicle and employer that the earlier policy has been found to be fake and therefore the present policy is *void ab initio* as discussed in para 21 of the impugned order. It is further submitted that having regard to the provision of Section 149(2)(b) of the Motor Vehicles Act, 1988, the policy which has been issued on the basis of earlier fake policy is *void ab initio.* The Insurance Company has no liability to pay the compensation arising out of such policy. The provision of Section 149(2)(b) of M.V. Act is material in this regard.

5.1. It is further submitted that since the policy is *void ab initio* therefore, no liability has arisen out of such policy towards the payment of compensation. In this regard the appellant/Insurance Company has adduced evidence in the form of statement of Naman Sharma (DW-2) who has categorically substantiated the case of the appellant. Though he has admitted in the cross-examination that no information was given to the owner of the vehicle about the earlier policy which was found to be fake on verification. However, the lapse on the part of the Insurance Company in this regard doesn't change the factual and legal proposition, as the insurance policy is

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void ab initio and not voidable. The owner of the vehicle has adduced no evidence and even he has not incorporated any pleadings in delay application as per paras 23 and 24 of the reply of the appellant/Insurance Company therefore there is no defence of the owner of the vehicle in this regard. Moreover, there was no driving license at the time of accident with the driver and the driving license was found to be fake as per Ex.D-9, the information given by RTO. The learned Commissioner has erroneously rejected the contention in this regard. It is also submitted that in the light of the provision of Section 4 of the Act of 1923, the liability of payment of penalty is only saddled on the employer and it cannot be shifted on the Insurance Company. In the light of the aforesaid factual aspects learned counsel prays for allowing the appeal by exonerating the Insurance Company from payment of compensation as awarded by the learned Commissioner.

6. I have heard the learned counsel for the appellant and perused the record.

7. The provisions of Section 149(2)(b) of the Motor Vehicles Act, 1988 is pertinent to be reproduced, which reads as under:-

> "**Section 149 (2)** No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—
> (a) .....
> (b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."

8. The aforesaid provisions are categorical that the Insurance

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Company can take ground that the insurance policy was void and it was obtained by non-disclosure of a material fact or by a representation of fact which was false in some material particular. Here in this case a fake earlier policy of the offending vehicle has been filed and in this respect the disclosure has been made by the verification report Ex.D-8 therefore, the insurance policy Ex.D-7 is *void ab initio*. Since no information has been given by the Insurance Company to the owner of the offending vehicle and the policy is *void ab initio* therefore, but the lapse on the part of the Insurance Company in this regard doesn't change the factual and legal proposition inasmuch as the policy Ex.D-7 is *void ab initio*. In this respect it can be safely held that the Insurance Company is not liable to pay the compensation amount. Moreover, the ground taken by the Insurance Company that at the time of incident the driver of the offending vehicle was driving the vehicle without valid and effective driving licence because the driving license was also found to be fake as per the information given by the concerned RTO vide Ex.D-9 therefore this defence of the Insurance Company is also found proved.

9. As far as the penalty part is concerned, it is held in the case of **United India Insurance Company Ltd. Vs. Lavkush Prasad and others 2009 (3) MPLJ 375** that liability to pay penalty arises only when there remains a clear clause in the policy. In the absence of any such clause in the insurance policy about acceptability of such liability the Commissioner has no power or jurisdiction to direct payment of penalty by the Insurance Company. Paras 14 and 15 of the aforesaid judgment are relevant which reads as under:-

"14. As regards imposition of liability of penalty on the Insurance

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company, it may be seen that the claimant has nowhere either pleaded or proved that the liability to pay penalty in case of default under section 4A of the Act was ever accepted by the insurance company. In the absence of any such acceptance by the appellant, the penalty could not have been legally imposed in the light of the decision by Hon'ble Supreme Court in the case of Ved Prakash (supra).

15. Thus, substantial question of law No. I is answered partly in favour of the appellant and partly against him by holding that the appellant is liable to pay interest on the amount of compensation for want of exclusion clause in the policy of insurance and the learned Commissioner for Workmen's Compensation has no power or jurisdiction to impose penalty on the insurance company and to direct to make payment of penalty on the amount of compensation in the absence of any clause in the policy of insurance about the acceptability of such liability."

10. Similar law has been laid down in the case of **Manjeet Singh Vs. Udaysingh and others 2012 (3) MPLJ 691** it has been held that Insurance Company cannot be held liable to reimburse the part of the penalty amount imposed upon the Insurance Company because such penalty is imposed on the insured employer due to default on his part to deposit the payment of compensation within a period of one month from the date it fell due. Para 12 of the judgment reads as under:-

"12. Now coming to the question of penalty, the point is no longer res-integra. The question has been settled by catena of decisions of the Supreme Court. It is held that where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by section 4A(3)(b) of the Compensation Act. When the Commissioner for Workmen while adjudicating the claim finds that because of unjustified delay on the part of employer, the victim did not get the compensation when it fell due, and then the penalty would get imposed on him. It is clear that penalty is not automatic to the liability Incurred by the insured employer under the Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term liability incurred by the insured employer as contemplated under the Motor Vehicles Act. This was the interpretation put by their Lordship of the Supreme Court on the two statutory schemes found under the provisions of the Workmen Compensation Act and Motor Vehicles Act. In the words of their Lordships'

> "the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner sections 3 and 4A(3)(a) of the

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> Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by section 4A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner."

11. In the case of **Ved Prakash Gard Vs. Premi Devi and others reported in 1998 ACJ 1** the Hon'ble Apex Court in paras 19 and 20 held as under:-

> "19. 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 the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4A sub section (3) (a) of the Compensatioin Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 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.
>
> 20. In view of the aforesaid conclusion of ours the present appeals will have to be partly allowed, The impugned judgments of the High Court will stand confirmed to the extent they exonerate the respondent-insurance companies of the liability to pay the penalty imposed on the insured employers by the Workmen's Commissioner under Section 4-A(3) of the Compensation Act. But the impugned judgments will be set aside to the extent to which they seek to exonerate insurance companies for meeting the claims of interest awarded on the principal compensation amounts by the Workmen's Commissioner on account of default o the insured in paying up the compensation amount within the period contemplated by Section 4-A(3) of the Compensation Act. Accordingly it must be held that the respondent insurance company will be liable to meet the claim of the appellant- insured in Appeals Nos. 15698-15699 of 1996 to the extent of Rs. 88,548/- in Claim Case No.2 of 1992 with interest thereon at the rate of 6% per annum of from the date of accident till the date of payment. But the redpondent- insurance company will not be liable to meet the claim of penalty of Rs.44,274/- imposed on the appellant-insured along with the interest of 6% per annum on the said amount of Rs. 44,274/-. To that extent the award of the Commissioner will stand modified. So far as the Claim No.3 of 1992 is concerned the respondent-insurance company will be liable to reimburse the compensation amount of Rs. 88,968/- with interest at the rate of 6% p.a. thereon from the date of the accident till the date of payment. But it will stand exonerated of its liability of

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reimbursement so far as the penalty amount of Rs.41,984/- and amount of interest at 6% p.a. thereon are concerned. To that extent the award of the Workmen's Commissioner in Claim Case No.3 of 1992 will stand modified. Similarly in Civil Appeal No. 15700 of 1996 the impugned judgment of the High Court will stand partly set aside s far as the claim for interest as imposed on appellant-insured is concerned and the award of the Workmen's Commissioner in so far as his award of Rs. 81,540/- as compensation along with interest will stand confirmed. But the further part of the award to the extent it directs that in the event of failure to pay the said amount within one month a penalty of 30% p.a. shall be payable by the insurance company, will stand set aside. Consequently the respondent-insurance company in this case will be liable to pay Rs.81,540/- by way of compensation with interest at 6% per annum thereon from the date of the accident till the date of payment to the claimants. The awards of the Commissioner will stand modified accordingly. They will obviously remain untouched so far as they are against the employers. It will be open to the claimants to enforce their claims of penalty amounts with proportionate interest thereon against employers concerned."

12. The similar law has been laid down by the Hon'ble Apex Court in the case of **New India Assurance Co.Ltd. Vs. Shiv Singh and another reported in 2000 ACJ 1434** wherein paras 4 and 5 reads as under:-

"4. The only question raised before us by the learned Counsel for the appellant is that the Workmen's Compensation Commissioner could not have held the insurance company liable for payment of the amount of penalty under Section 4A(3) of the Workmen's Compensation Act. This question was considered by this Court in Ved Prakash Garg v. Premi Devi and Ors. and it was held:

> 19. As a result of the aforesaid discussion, it must be held that the question posed for our consideration must be answered party 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 Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4A Sub-section (3) (a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4A(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.

5. In view of the above, the appeal is allowed and it is held that the appellant-insurance company is not liable to pay the amount of penalty as determined by the Workmen's Compensation Commissioner."

13. In the case of **New India Assurance Company Limited Vs. Rekha Chaudhary and others reported in 2026 ACJ 559** the Hon'ble Apex Court in paras 24 and 25 has held as under:-

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"24. This court in *Sheela Devi and Another v. Oriental Insurance Company Limited 2025 ACJ 1122 (SC)*, wherein one of us was part of the bench (Justice Aravind Kumar) while dealing with a supplementary question of reduction of penalty amount had reiterated the view taken by this court in Ved Prakash Garg (supra) and observed that:

> "10. It is settled law that statutory penalty which is imposed upon the employer under section 4-A(3)(b) of the Act is not to be indemnified by the insurer. In Ved Prakash Garg (supra), this court has held that the Insurance company shall compensate the insured-employer for the principal amount of compensation as well as interest thereon, however, in case of any additional amount of compensation is awarded by the commissioner by way of penalty, the same would be the liability of the insured-employer alone and not of the Insurance Company. The decision in Ved Prakash Garg (Supra) has been followed in *L.R. Ferror Alloys Ltd. v. Mahavir Mahto 2001 ACJ 645 (SC)*, holding that the insurer is liable to indemnify the owner only for the compensation along with interest thereon and not the penalty imposed on the employer for default in payment of amount within one month from the date of incident. In view of the above, the direction of the High Court, fixing the liability to pay statutory penalty on the employer only, requires no interference from this court."

Conclusion:

25. Hence, in the light of aforesaid discussion, we are of the considered view that the present appeal deserves to be allowed. Accordingly, it stands allowed. Consequently, the impugned judgement and order dated 21.05.2025 passed in F.A.O No. 147 of 2021 is set aside, so far as it imposes the liability of paying the penalty under Section 4-A(3)(b) of Employees' Compensation Act, 1923 on the appellant-insurance Company and the said liability is fastened upon the employer i.e., respondent no. 4 herein to pay the amount of penalty of Rs.2,57,838/- as ordered by the Commissioner by Order dated 08.02.2021 within a period of eight weeks from today. Rest of the findings of the High Court remains undisturbed."

14. Similar law has been laid down in the case of **Sheela Devi and another Vs. Oriental Insurance Co.Ltd. and another reported in 2025 ACJ 1122.**

15. In the light of the law laid down in the aforesaid cases there is no iota of doubt that the amount of penalty is to be deposited by the employer himself and the Insurance Company cannot be held liable to pay such amount of penalty despite the fact that Insurance Company is liable to pay the amount of compensation along with interest. The substantial questions of

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law is decided in favour of the appellant/Insurance Company.

16. In conspectus of the aforesaid discussion the present Miscellaneous Appeal is allowed by setting aside the impugned order. The appellant/Insurance Company is exonerated from the payment of compensation amount along with interest and penalty levied by the learned Commissioner. The entire amount shall be recoverable from the employer.

17. With the aforesaid, the present appeal is allowed and disposed of.

(RAJENDRA KUMAR VANI)
JUDGE

RJ

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