



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Misc. Appeal No. 2451/2011

National Insurance Company Limited, Branch Office, Udaiput
through its Legally Constituted Authority, Divisional Office, 12
Residency Road, Jodhpur.

----Appellant

Versus

1. Smt. Hagami W/o late Shri Mohan Singh.
2. Shri Hemendra Singh S/o late Shri Mohan Singh, Minor
through his natural guardian mother Smt. Hagami.
3. Shri Shankar Singh S/o Shri Bheru Singh.
4. Smt. Pani Devi W/o Shri Shankar Singh.

All residents of village Sadaran, PS Bheem, District
Rajsamand.

5. Smt. Devendra Kaur W/o Shri T.D. Bhatia, R/o W/B-74A,
Ganesh Nagar, Shanarpur, Delhi

----Respondents

For Appellant(s)	:	Mr. Jagdish Vyas
For Respondent(s)	:	Mr. Lokendra Singh Chundawat, Mr. Nikhil Ajmera for Mr. Sandeep Sarupuria

HON'BLE MR. JUSTICE SANDEEP SHAH

Order

13/02/2026

1. The present appeal has been filed by the Insurance Company challenging the judgment and award dated 18.02.2008 passed by the learned Commissioner, Workmen's Compensation Act, 1923, Rajsamand in W.C. Case No.18/2006(F) whereby compensation to the tune of Rs.5,01,731/- has been awarded to the claimants.

2. Brief facts of the case are that a claim petition was filed by the claimants i.e the wife, minor son and parents of deceased - Mohan Singh. It was stated in the claim petition that deceased - Mohan Singh was working as a driver under the present respondent No.5 and, while driving truck bearing registration No. DL-1-GB-3977, during the course of his employment got



electrocuted, due to which, he expired. Since, the truck in question was insured, the claim was filed against the Insurance Company also.

3. The learned Commissioner, after considering the pleadings, framed four issues for adjudication and subsequently while treating the deceased under the employment of respondent No,5- Smt. Devendra Kaur and, the vehicle being insured, has awarded a sum of Rs.4,33,820/- as compensation, Rs.65,411/- as interest, Rs.2,500/- towards funeral expenses and in all a total sum of Rs.5,01,731/- was awarded as compensation along with Rs.21,691/- as penalty. In case of non-payment of amount of compensation within the stipulated time, additionally 12% interest on the compensation amount has awarded.

4. Learned counsel appearing for Insurance Company very fairly submits that though the appeal was filed primarily only on two counts i.e. the direction for payment of interest as well as penalty to the Insurance Company, however, as far as the issue of payment of interest by the Insurance Company is concerned, since there was no additional clause with regard to there being no liability of the Insurance Company in the policy document, the liability of the insurance cannot be denied by the Insurance Company. He submits that the issue in this regard is no longer res integra in view of the judgment passed by the Hon'ble Apex Court in the case of "**New India Assurance C. Ltd. v. Harshadbhai Amrutbhai Modhiya & Anr.**" reported in AIR 2006 SC 1926 as well as the judgment passed by a Coordinate Bench of this Court in the case of "**EITA India Limited v. New India Insurance Company**" S.B. Civil Miscellaneous Appeal No.736/2020. He thus



asserts that the only issue is with regard to the direction of payment of penalty to the Insurance Company. He further submits that such a direction cannot be passed as there is no clause with regard to payment of penalty in the policy document and the Insurance Company, even otherwise, cannot be held liable for payment of penalty, which essentially is in overt act on the part of the employee concerned. He refers to the judgment passed by the Hon'ble Apex Court in the case of **"Ved Prakash Garg v Premi Devi & Ors."** reported in 1997(8) SC 412, as also, judgment passed by the Division Bench of this Court in the case of **"United India Insurance C. Ltd. v. Smt. Sira Kanwar"** D.B. Civil Misellaneous Appeal No.768/2005 wherein while considering clause IMT-18 of the insurance policy, it was held that the Insurance Company cannot be held liable for payment of the penalty and the penalty has to be awarded against the employer only.

5. Learned counsel for the respondent is not in a position to dispute the factum of liability of payment of penalty upon the owner and not upon the employer.

6. Considering the limited point involved and after having perused the judgment passed by the Hon'ble Apex Court in the case of **"Ved Prakash Garg (supra)"** as well as judgment passed in Division Bench in the case of **"United India Insurance C. Ltd. (supra)"**, there cannot be any iota of doubt with regard to there being no liability of the Insurance Company to make the payment of penalty as awarded by the Commissioner. The liability of penalty cannot be saddled upon the Insurance Company in view of the specific terms and conditions of the policy documents.



7. In view of the above-mentioned observation, the impugned judgment and award dated 18.02.2008 passed by the learned Commissioner, Workmen's Compensation Act, 1923, Rajsamand in W.C. Case No.18/2006(F) is modified only to the extent that the liability for making the payment of amount of penalty to the tune of Rs.21,691/- shall be upon the employer i.e. the respondent No.5 and not upon the Insurance Company alone. Rest of the award shall remain intact and the appellant shall make the necessary payment as directed by the award .

8. The present Civil Miscellaneous Appeal is disposed of accordingly.

9. The record of the case be sent back forthwith.

(SANDEEP SHAH),J

25-charul/-