

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3174 OF 2016

M/s Agrawal Ginning Pressing
Through it's proprietor,
Shri Santosh Harshy Agrawal,
Age: 56 Yrs., occu. Business,
R/o Virwada Chowk, Chopda,
Dist. Jalgaon.

= **APPELLANT**
(Orig.Oppn.No.1)

VERSUS

1) Shri Rasul Nabi Khatik
Age: 54 Yrs., occu. Labour,
R/o Malharpura, Chopada,
Dist. Jalgaon. .. **Orig.Claimant**

2) The National Insurance co.Ltd.
Jalgaon
(Through it's Branch Manager)= **RESPONDENTS**
(orig.oppnt.No.2)

Mr.Vijay Y.Patil, Advocate for Appellant;
Mr.Kishor C.Sant, Advocate for Respondent No.1;
Mr.V.N.Upadhye, Advocate for Respondent No.2.

CORAM : P.R.BORA, J.

DATE : 25th November,2016.

ORAL JUDGMENT:

1) With the consent of Learned Counsel
appearing for the parties, the appeal is finally
heard at the stage of admission.

2) In the present appeal, the only objection raised by the appellant in exception to the impugned Award passed by the Employees' Compensation Commissioner (for short, the Commissioner) in WCA No.22/2011 is that, - without issuing any notice, as contemplated under Section 4-A of the Employees' Compensation Act (for short, the Act), the learned Commissioner has saddled the penalty of Rs.1,00,000/- on the present appellant.

. The learned Counsel has placed reliance on the judgment of Hon'ble Apex Court in the case of Oriental Insurance Co. Ltd. Vs. Siby George and Ors. - reported in AIR 2012 SC 3144. The learned counsel submitted that the learned Commissioner has not given any show-cause notice before imposing the penalty to the present appellant.

3) Shri Sant, learned Counsel appearing for the original complainant, i.e. the employee, submitted that since the present appellant has

fully participated in the proceedings before the Commissioner, there was no need of issuing any separate notice before imposing the penalty.

4) Shri Upadhye, learned Counsel appearing for the insurance company, has prayed for passing appropriate orders.

5) On perusal of the impugned judgment, it is quite evident that the learned Commissioner did not issue any notice to the present appellant before saddling the liability of penalty on him. In view of the judgment of the Hon'ble Apex Court relied upon by the appellant, the impugned order passed by the Commissioner so far it relates to imposition of the penalty, cannot be sustained. In Para 7 of the cited judgment, the Hon'ble Apex Court has observed thus, -

"7. It is, thus, to be seen that sub-section (3) of section 4-A is in two parts, separately dealing with interest and penalty in clauses (a) and (b) respectively. Clause (a)

makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of subsection (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default per se."

6) In view of the law laid down by the Hon'ble Apex Court as above, the impugned order so far as it relates to imposing the penalty cannot be sustained and deserves to be quashed and set aside and accordingly is set aside. However, it will be open for the learned Commissioner to issue a notice, as contemplated under Section 4-A of the Act, to the employer and decide the issue of penalty afresh by giving due opportunities to the parties. The learned Commissioner shall issue notice, as above, and decide the issue so raised, as expeditiously as possible and preferably within a period of six months from the date of this order.

. The R. and P. be forthwith sent back to the learned Commissioner.

7) The appeal stands allowed in the aforesaid terms.

(P. R. BORA)
JUDGE

bdv/