

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MA No.663 of 2005**

1. Managing Director M/s Rungta Re-rolling Mill Devada, Village Devada, Tehsil and district Rajnandgaon (CG).
2. Pankaj Rungta S/o Kamal Narayan Rungta, R/o Ganjpara, Durg, Proprietor-Rungta, Re-rolling Mill, Devada.

---- Appellants**Versus**

1. Smt. Mallin Bai W/o late Nehruram Thakur.
2. Manoj Kumar S/o late Nehruram Thakur,
3. Bhuneshwar Prasad S/o late Nehruram Thakur,
4. Ku. Meena S/o late Nehruram Thakur,
All are R/o Village Devada, Tehsil and District Rajnandgaon (CG).
5. The New India Insurance Co. Ltd. Through Branch Manager, Branch Office, Parekh Bhawan, Station Road, Durg (CG).

---- Respondents

For Appellants	:	Shri Anup Majumdar, Advocate.
For respondents No.3	:	Shri P. Dutta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****23/08/2017**

1. The present is an appeal under Section 30 of the Employee's Compensation Act, 1923 (for short, the Act) against the award dated 30.03.2005 passed by the Commissioner Employee's Compensation Act, Labour Court, Rajnandgaon, in Claim Case No.58/EC Act-Fatal/2003. Vide the said impugned award, the Commissioner in a claim case preferred under the Act has awarded compensation of Rs.3,38,880/- along with interest @ 6 percent per annum. In addition, a penalty of 30 percent of the award i.e. Rs.1,01,664/-has also been imposed
2. It is the later part of the award imposing penalty which is under

challenge in this appeal.

3. This court vide its order dated 13.06.2005 had framed a question of law whether the Tribunal has committed an error of law in awarding the penalty without giving an opportunity of hearing to the appellants. The other question of law accepted by this court while admitting the appeal was whether the Labour Court was competent enough to decide the claim case under the provision of Workmen's Compensation Act.
4. So far as question No.2 is concerned, learned counsel for the appellant submits that he does not want to press the said issue. Therefore, the only question of law that remains to be adjudicated upon is the first question i.e. whether the court below should have decided the issue of imposition of penalty without issuance of notice and without affording an opportunity of hearing to the employer.
5. At this juncture it is relevant to take note of the provisions of the imposition of penalty under the Act. Claus-B of Sub-section 3 of Section 4-A of the Act deals with the issue of imposition of penalty which for ready reference is reproduced herein under:

“4-A (3)(b). if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.”
6. The proviso of said Act very specifically holds that before awarding penalty, the court should issue show cause notice to the employer and only thereafter could impose the penalty. This aspect has been decided by the various High Courts holding that before imposing penalty, an

opportunity of hearing to the employer is statutorily required, hence it is mandatory required to be followed. In the instant case, undisputably from the perusal of records and from the proceedings drawn by the court below, it does not appear that the court below had granted any opportunity of hearing to the appellant/employer. Neither any notice was issued to the employer before imposition of penalty and thus, the findings of the Court below imposing penalty, to that extent is bad in law.

7. In view of the same, this court has no hesitation in reaching to the conclusion that provisions contained in clause-b of Sub-section 3 of Section 4-A of the Act has not been followed by the court below and the award of the Labour Court to the extent of imposing penalty without issuing show cause notice to the employer is bad in law. Therefore, the same deserves to be and is accordingly set aside.
8. The matter is remitted back to the Labour court for deciding the case only on the issue of imposition of penalty. It is directed that before imposing any penalty, the court shall issue notice to the appellant-employer and after granting opportunity of hearing to the petitioner, the court would be free to pass a fresh order on the issue of imposition of penalty. It shall be left open for the Labour court to decide the quantum of penalty that has to be imposed notwithstanding the fact that vide the impugned award penalty of 30 percent was imposed.
9. The appeal thus is partly allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge