

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**MAC No. 785 of 2017**

Shripal Chopda S/o Mr. Swaroop Chand Chopda, Aged About 28 Years R/o Village Sambalpur, P.S. Bhanupratappur, Tehsil Bhanupratappur, Distt. North Bastar Kanker, Chhattisgarh

**---- Appellant**

**Versus**

1. Jayram Dugga S/o Mr. Santuram Dugga, Aged About 45 Years R/o Village Silpat, P.S. Lohattar, Tehsil Bhanupratappur, Distt. North Bastar Kanker, Chhattisgarh .....(Claimant)
2. Gajendra Gawde S/o Upendra Singh Gawde, Aged About 36 Years R/o Village Bheeragaon, P.S. Bhanupratappur, Tehsil Bhanupratappur, Distt. North Bastar Kanker, Chhattisgarh ..... (Driver)
3. The United India Insurance Company Limited, Branch Office Rajmal Complex, Kamthi Line, Rajnandgaon, Distt. Rajnandgaon, Chhattisgarh .....(Insurance Company)

**---Respondents**

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| For Appellant         | : | Mr. Raza Ali, Advocate       |
| For Insurance Company | : | Mr. Dashrath Gupta, Advocate |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**11/12/2017**

1. Heard on I.A. No.2, which is an application for condonation of delay.  
For the reasons assigned in the application and finding them to be satisfactory, I.A. No.1 is allowed and delay of 211 days in filing the appeal stands condoned.
2. The challenge is to the award dated 03.08.2016, passed by the Commissioner for Employees Compensation Labour Court, Dhamtari, Chhattisgarh, in Case No. 13/W.C. Act/2013 (Non-Fatal).  
Vide the impugned award, the Commissioner has awarded a compensation of Rs.3,48,081/- to the Claimant with interest @10% per annum. In addition to this the Commissioner has also awarded penalty of Rs.1,50,000/- to be paid by the present appellant-the employer of the Claimant.

3. The counsel for the appellant takes the ground that before imposition of penalty; the Commissioner has not issued any show cause notice as is required under Section 4A of the Employees Compensation Act. The issue involved in the case is well settled by a catena of decisions and in addition, it is also the statutory requirement under the provisions of Section 4A, which specifically holds that before imposition of penalty, the Commissioner should afford a reasonable opportunity to the employer to show cause as to why the penalty should not be imposed.
4. In the instant case from the perusal of the record, it does not reflect that the learned Commissioner had ever issued any show cause notice against the employer before imposition of the penalty.
5. The impugned order also is silent to this aspect so also the proceeding is silent. It appears that the learned Commissioner while deciding the claim application itself has awarded penalty also. Whereas as per the proviso to Section 4A, the requirement of law is for issuance of a show cause notice before awarding penalty.
6. In the given facts and circumstances of the case, this Court is of the opinion that the awarding of penalty by the Commissioner without issuance of a show cause notice is not tenable and the impugned award to that extent stands set-aside/quashed leaving open to the learned Commissioner to issue notice to the respondents under Section 4A before passing an order of penalty. The award stands modified and the matter is remitted back to the learned Commissioner below for considering the issue of payment of penalty part. So far as compensation part is concerned, the said issue has attained its finality, as it has not been questioned by the Insurance

Company and the Commissioner need not consider the issue of payment of compensation part. Before proceeding further, the Commissioner shall also issue notice to the Claimant.

7. With the aforesaid directions, the appeal stands allowed in part.

Sd/-  
**(P. Sam Koshy)**  
**Judge**

Ved