

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 271 of 2014**

1. Omkar Singh S/o Ratan Singh, aged About 67 Years R/o Station Para Ward No. 10, Rajnandgaon, Distt. Rajnandgaon (C.G.)
2. Asha W/o Omkar Singh Aged About 52 Years R/o Station Para, Ward No. 10, Rajnandgaon, Distt. Rajnandgaon (C.G.)

---- Petitioner**Versus**

1. Rajendra Agrawal S/o Late P.R. Agrawal Aged About 60 Years Proprietor- Maa Gangai Travels and Owner of Passenger Vehicle bearing No. C.G. 04-E-1057, R/o Near Railway Crossing Station Para Rajnandgaon (C.G.)
2. Bharat S/o Makhan Tiwari, Aged About 42 Years, Occupation Driver - C.G. 04-E-1057, R/o Village Charbhantha, P.S. Sahashpur Lohara, Distt. Kabirdham (C.G.)
3. New India Insurance Company Divisional Manager, Divisional Office, Bhilai Distt. Durg. (C.G.)

---- Respondents

For Petitioner	:	Shri Viprasen Agrawal, Advocate.
For Respondent No.1	:	Shri Rakesh Thakur, Advocate.
For Respondent No.3	:	Shri H.B. Agrawal, Senior Advocate assisted by Mrs. Preeti Yadav, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17/03/2017**

(1) The Commissioner for Workmen's Compensation, Labour Court, Rajnandgaon, by its award dated 13.10.2011, awarded compensation to the extent of Rs.2,37,087 and also imposed penalty of Rs.1,09,235/- against the respondents herein and in favour of the petitioners/claimants.

(2) On an application filed by the claimants, who are parents of the deceased employee -Dhiraj Singh Rajput, for grant of amount of

penalty of Rs.1,09,235/-. Commissioner for Workmen's Compensation, by its order dated 08.07.2013 directed the said amount of penalty of Rs.1,09,235/- be disbursed to them, but anyhow the amount could not be disbursed to the claimants and directed to be deposited in the F.D.R.,thereafter, again the claimants moved an application for disbursement of the said amount.

(3) This time, Commissioner for Workmen's Compensation, by its impugned order dated 24.09.2013, directed that 50% amount of the penalty be disbursed to the claimants and further held that petitioners/claimants are not entitled for the remaining 50% amount of penalty.

(4) Feeling aggrieved and dissatisfied with the order dated 24.09.2013 passed by the Commissioner for Workmen's Compensation, petitioners have preferred this petition under Article 227 of the Constitution of India challenging the same.

(5) Mr. Viprasen Agrawal, learned counsel for the petitioner would submit that the amount of penalty is payable to the petitioners as they are the dependents of deceased employee-Dhiraj Singh Rajput by virtue of provisions contained in Sub-Section 3-A of Section 4-A of the Employees' Compensation Act, 1923 (for short 'the Act, 1923'), therefore, the order of learned Commissioner for Workmen's Compensation withholding 50% of the amount of penalty is liable to be set aside.

(6) Per Contra, Mr. H.B. Agrawal, learned Senior Counsel for respondent No. 3/Insurance Company & Shri Rakesh Thakur, Counsel for respondent No. 1/owner would oppose the writ petition and support

(8) At this stage, it would be appropriate to notice sub-Section 3 & 3-A of Section 4-A of the Act, 1923, which states as under:-

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(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 percent of such amount by way of penalty

Explanation.- For the purposes of this sub-section, “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(10) The aforesaid provision clearly states that interest and penalty shall be payable to the dependents of the deceased employee under Sub Section 3-A of Section 4-A of the Act, 2013, as such, dependents

of the deceased/employee are entitled for full amount of penalty.

(11) In the present case, the petitioners are dependents of the deceased-employee and by virtue of sub-Section 3-A of Section 4-A of the Act, 1923, which has brought into force with effect from 15th September, 1995, the petitioners are entitled for the amount of penalty i.e. Rs. 1,09,235/- and, therefore, they are entitled for whole amount of penalty i.e. 1,09,235/-. Thus, in the considered opinion of this Court, the Commissioner for Workmen's Compensation has committed illegality in withholding 50% of the penalty amount, which is contrary to the provisions contained in sub-Section 3-A of Section 4-A of the Act, 1923, therefore, impugned order dated 24.09.2013 withholding 50% of the amount of penalty by the Claims Tribunal is liable to be and is hereby dismissed. It is directed the Claims Tribunal shall disburse the remaining 50% of the amount of penalty to the petitioners/claimants expeditiously.

(12) The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-