

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 403 OF 2017

SMT. PRITI GHANSHYAM RAMAWAT AND ORS
VERSUS
BADRINARAYAN SHRIRAM BAHETI AND ANR

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Advocate for Appellants : Mr. A.N. Walujkar
Advocate for Respondent No.1 : Mr. S.A.G. Qureshi
Advocate for Respondent No.2 : Mr. S.R. Bodade

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CORAM : V. K. JADHAV, J.
DATED : 13th JUNE, 2017

PER COURT:-

1. Being aggrieved by the judgment and award dated 5.11.2016, passed by the Commissioner, Workmen's Compensation, Aurangabad in W.C.A. No. 54 of 2007, the original applicants preferred this appeal to the extent of clause 6 of the operative part of the order, wherein the Commissioner has directed the applicants to initiate the proceeding against original non-applicant No.1-employer for recovery of penalty to the extent of 50% as claimed by the applicants.

2. Learned counsel for the appellants submits that though in para 25 of the judgment, it is observed that opponent-employer is liable to pay penalty, in clause 6 of the operative part of order, the learned Commissioner directed the applicants to initiate independent

proceeding for recovery of penalty amount.

3. Learned counsel for respondent No.1 employer submits that the Commissioner has rightly given the said direction and the appellants-original applicants are at liberty to initiate independent proceedings before the same court for recovery of penalty amount.

4. In the case in hand, the respondent-employer has disputed the liability. Once the compensation ascertained under the Act either provisionally under sub-section (2) of Section 4 or on final adjudication by the Commissioner under Section 19, the same would fall due after expiry of one month from the date of adjudication under Section 19 of the said Act. The Supreme Court in the case of ***Ved Prakash Garg vs. Premi Devi and Ors, reported in AIR 1997 SC 3854*** held that penalty is required to be levied under the said provision after issuing show cause notice to the employer concerned, who will have reasonable opportunity to show cause that on account of some justification on his part there is delay in making payment of compensation and thus, he is not liable to pay penalty. It is also held that if ultimately, the Commissioner after giving reasonable opportunity to the employer to show cause, takes a view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his personal fault, he is

held responsible for the delay, then penalty would be imposed on him. It has been further held that so far as the penalty amount is concerned, it cannot be said that it automatically flows from the main liability incurred by the insurer employer under the said Act.

5. In view of the ratio laid down by the Supreme Court in the case of ***Ved Prakash Garg (supra)***, I do not find any fault in the impugned judgment and award, particularly in clause 6 of the operative part of the order of Commissioner directing the applicants to initiate proceeding for recovery of penalty to the extent of 50% as claimed by them against the respondent-employer.

6. In view of above, I do not find any substance in the appeal. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby dismissed. No costs.
- II. first appeal is accordingly disposal of.

(V. K. JADHAV, J.)

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