

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4345 OF 2016

VARSHA PRADHAN RATHOD AND ORS
VERSUS
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION

...
Advocate for Appellants : Mr. Suryawanshi Surendra V.
Advocate for Respondent : Mr. B.S. Deshmukh
.....

CORAM : V. K. JADHAV, J.
DATED : 5th APRIL, 2017

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. Being aggrieved by the judgment and award passed by the Commissioner for Employees Compensation, Hingoli, dated 28.7.2016, in Fatal Accident No. 12 of 2014, original claimants have preferred this appeal to the extent of order of the Commissioner directing the respondent to pay penalty of Rs.5000/- to each of the petitioners.
3. Learned counsel for the appellants/original claimants submits that in terms of the provision of Section 4-A, sub section (3-b) of the Employees Compensation Act, if in the opinion of the Commissioner, there is no justification for the delay, then the respondent employer shall be directed in addition to the amount of arrears and interest

thereon to pay further sum not exceeding 50%, of such amount by way of penalty. Learned counsel submits that the Commissioner has recorded his satisfaction in para 18 of the judgment and imposed penalty on the employer for his failure to give justification for the delay in paying compensation. The Commissioner has further observed that this is a personal liability imposed on the employer for the delay committed by him in paying compensation without any justification and the respondent had failed to give any justification for the delay in payment of compensation by it to the petitioners. Learned counsel submits that despite these observations, the learned Commissioner has directed the respondents to pay meager penalty of Rs.5000/-.

4. Learned counsel for the respondent M.S.R.T.C. submits that the Supreme Court in the case of ***Ved Prakash Garg vs. Premi Devi and others, reported in AIR 1997 SC 3854*** and in the case of ***Oriental Insurance company Limited vs. Siby George and others, reported in AIR 2012 SC 3144*** has held that the penalty is required to be levied under the said provision of the Act only after issuing show cause notice to the respondent/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 has been

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 insured employer under the said Act.

5. In the instant case, though respondent M.S.R.T.C. has not preferred any appeal, it appears from the impugned judgment and award passed by the Commissioner, more particularly in para 18 of the judgment that no separate show cause notice has been issued to the respondent M.S.R.T.C. with regard to imposition of the penalty and as such, respondent M.S.R.T.C. had no reasonable opportunity to show cause that on account of some justification on its part there is delay in making the payment of compensation.

6. In the case of ***Oriental Insurance company Ltd. vs. Siby George and others (supra)*** in para 7 of the judgment, the Supreme Court has made following observations:-

"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 clause (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 sub-section (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."

7. In view of the ratio laid down by the Supreme Court in aforesaid two cases, the impugned clauses 4 and 5 of the operative part of the judgment hardly survives. However, no prejudice is likely to cause to the appellants/original claimants if the Commissioner is directed to follow procedure of issuing show cause notice to the respondent employer and then decide the question of penalty. Hence, the following order:-

O R D E R

- I. The first appeal is partly allowed. No costs.
- II. The **clauses 4 and 5** of the operative part of the judgment and order dated 28.7.2016, passed by the Ex-Officio Commissioner for Employee's Compensation and Civil Judge, Senior Division, Hingoli in Fatal Accident No. 12 of 2014 are hereby quashed and set aside and instead of that

the learned Commissioner for Employees Compensation, Hingoli is hereby directed to follow the procedure in terms of ratio laid down by the Supreme Court in the cases of **(I) *Ved Prakash Garg vs. Premi Devi and others*, reported in AIR 1997 SC 3854 and (ii) *Oriental Insurance Co. Ltd. vs. Siby George and Ors. Reported in AIR 2012 SC 3144***, while deciding the issue of penalty.

- III. Rest of the judgment and award stands confirmed.
- IV. The appellants-claimants may file an appropriate application before the Commissioner, Hingoli within four weeks from today and after following the procedure, the Commissioner shall decide the said application within three months thereafter.
- V. Needless to say that the principal amount alongwith interest, if deposited before the Commissioner, the appellants-claimants are permitted to withdraw the same.
- VI. The first appeal is disposed of accordingly.

(V. K. JADHAV, J.)