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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 155 of 2013

Judgment Reserved on 29/08/2018

Judgment Delivered on 15/11/ 2018

- Ranjeet Singh Rana S/o G.S. Rana Aged About 47 Years R/o Gurunanak Nagar, Purana Bazar, Dalli Rajhara, Tah. Dalli Rajhara, Distt. Durg C.G.

---- Appellant

Versus

1. Gathia S/o Kejau Lohar Aged About 55 Years

2. Smt. Dasari Bai W/o Gathia Lohar Aged About 50 Years, Occupation House wife

   both are R/o Bamhani, Tah. Chhurua, Distt. Rajnandgaon C.G.

3. Shravan Kumar Sahu W/o Hemlal Sahu Aged About 25 Years R/o Gundardehi, Thana- Ambagarh Chowki, Distt. Rajnandgaon C.G.

4. The Oriental Insurance Company Ltd., Near Office Of Life Insurance Corporation Of India, Railway Station Road, Rajnandgaon C.G. (Insurance of Tanker CG04-ZC-1698)

---- Respondents

For Appellant	Shri Shiv Sahu, Advocate on behalf of Shri N.K. Vyas, Advocate.
For Respondent No.4	Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

C A V Judgment

1. This appeal is filed by the appellant/non applicant No.2 owner of the vehicle aggrieved by the order dated

17.12.2012, passed by the Commissioner for Workmen's Compensation Labour Court Rajnandgaon, C.G. in claim case No. 39/WC Act/Fatal, 2009, on the ground that Learned Commissioner without any show cause notice imposed penalty upon appellant to the tune of Rs. 1,47,868/- i.e. 50% of award.

2. Respondent Nos. 1 & 2/claimants filed a claim petition before the Commissioner for Workmen's compensation (for short 'the Commissioner') under Section 22 of the Workmen's Compensation Act, 1923, claiming compensation of Rs.2,95,737/- with penalty and interest at the rate of 18% per annum from the date of award till its realization. According to the claimants their son namely Rakesh Kumar, aged about 17 years, was in the employment of non-applicant No.2 as labour, who was engaged in the work of road construction and was earning Rs.100/- per day. On the date of accident i.e. 05.12.2008 respondent No.3/non applicant No.1 Shravan Kumar Sahu by driving the vehicle Tanker bearing registration No. CG04-ZC-1698 in rash and negligent manner dashed the deceased, as a result of which the deceased died on the spot. At the relevant time, the offending vehicle was owned by the appellant and insured with respondent No.4/non applicant No.3 Oriental Insurance company Ltd. Since the death of the deceased occurred during the course of employment in an accident arising out of the employment, the claimants filed the claim petition seeking compensation as mentioned above.

3. Respondent No.3/Non-applicant No.1, Shravan Kumar Driver of the vehicle filed his written statement and denied the allegation that the offending vehicle was being driven by him in the rash and negligent manner. According to him, the

death of the deceased was solely on account of negligence of the deceased himself.

4. Non-applicant No.2/Owner of the vehicle, though admitted that the deceased was under his employment as labour but denied that he was 17 years of age and was earning Rs.100/- per day. It was further stated that since the vehicle in question was insured with respondent No.4/Non-applicant No.3, liability, if any, is to be fastened upon the Insurance Company.

5. Respondent No.4/Non-applicant No.3 Insurance Company by filing its written statement denied the averments in the claim petition and stated that the accident occurred due to rash and negligent driving by respondent No.3/Non-applicant No.1, there was breach of policy conditions and therefore, the Insurance is not liable to pay any compensation to the claimants.

6. Learned Commissioner after hearing both the parties and considering the material available on record, the evidence led by them by the impugned order granted a total compensation of Rs. 2,95,737/- in favour of the claimants fastening the liability on the Insurance Company. The Commissioner directed the Insurance Company to deposit the said amount within a period of 2 months from the date of order or else it shall have to pay interest at the rate of 12% per annum from the date of application till its realization. This apart the Commissioner directed the appellant/non-applicant No.2 to deposit penalty of Rs.1,47,868/- i.e. 50% of the award within a period of 30 days from the date of order with the Court. Aggrieved by this imposition of penalty the appellant/owner has filed the instant appeal.

7. Counsel for the appellant submits that the order impugned is

bad in law as before imposing penalty on the appellant no show cause as required under Section 4-A(3) of the Act of 1923 was issued to the appellant. Issuance of notice to the owner before imposition of penalty is mandatory and therefore, the impugned order suffers from legal infirmity and as such liable to be set aside to the extent it imposes penalty on the appellant.

8. On the other hand, learned counsel appearing for the respondent/Insurance company has supported the impugned award.

9. Heard learned counsel for the parties and perused the material available on record including the impugned order.

10. The instant appeal has been admitted on the following substantial questions of law:

> "1. Whether the Commissioner for Workmen Compensation was justified in imposing a penalty of Rs.1,47,868/- on the appellant (employer)?
>
> 2. Whether the imposition of penalty is in conformity with the requirement of Section 4-A(3) proviso?"

11. Having gone through the entire material available on record, it is found that no show cause notice was given to the appellant by the Commissioner for explaining as to why penalty should not be imposed on him. Section 4-A(3)(b) reads as under:-

> **4A. Compensation to be paid when due and penalty for default.**-

(1) xxxxxxxx xxxxxxxxxx xxxxxxxxxx

(2) xxxxxxxx xxxxxxxxxx xxxxxxxxxx

(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-

(a) xxxxxxxx xxxxxxxxxx xxxxxxxxxx

(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:

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.

12. Thus, a bare perusal of Section 4-A (3) (b) of the Act of 1923 makes it clear that before imposing the penalty, it is mandatory for the Commissioner to give a reasonable opportunity to the employer to show cause notice as to why penalty should not be imposed on him. However, in the present case, no such show cause notice was given to the appellant nor any opportunity of hearing was afforded to him and straight way the penalty was imposed by the Commissioner.

13. The Division Bench of this Court in the matter of **M/s Ventura Buildtech Ltd Vs Smt. Sadhna Devi and others,** (MAC No.433 of 2012) order dated 02.11.2012, while

dealing with the identical issue has held that non-compliance of the mandatory provisions of Section 4-A (3) (b) of the Act, 1923 by the Commissioner makes the imposition of penalty illegal and therefore, the same was set aside.

14. On the basis of aforesaid discussion, the substantial questions of law are answered in the negative and it is held that the Commissioner for Workmen's Compensation was not justified in imposing penalty of Rs.1,47,868/- on the appellant/employer as it was in violation of the provisions of Section 4-A (3)(b) of the Act.

15. In the result, the appeal is allowed and the impugned order insofar as it relates to imposition of penalty on the appellant is hereby set aside.

16. In the appeal memo, it has been stated by the appellant that the instant appeal has been filed without depositing the amount of penalty and therefore, there is not need to pass any order for refund of penalty to the appellant.

Sd/-
Gautam Chourdiya
Judge

Akhilesh