

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 387 of 2014**

- Devshri Agrotech Private Limited Electronic And Construction Division Arjuni, Raipur Road, Dhamtari, Distt. Dhamtari C.G., Through- Its Director- Nishant Lunkad, Distt. Dhamtari C.G.

----Appellant**Versus**

1. A. Chitra Devi W/o Late Sunil Muni Aged About 24 Years R/o Piparpati, Post- Piparpati, Distt. Khadgadiya Bihar, At Present R/o Surya Rice Mill, Dhamtari, Distt. Dhamtari C.G.

B. Nishit Kumar S/o Late Sunil Muni Aged About 8 Years

C. Renu Kumari D/o Late Sunil Muni Aged About 6 Years

D. Diwakar S/o Late Sunil Muni Aged About 3 Years

E. Shivan Kumar S/o Late Sunil Muni Aged About 1 Years

Respondent nos. B to E are Minor, Thru- Mother Smt. Chitra Devi,

Now all are R/o Piparpati, Post- Piparpati, Distt. Khadgadiya Bihar,

2. The Oriental Insurance Company Ltd. M.B. Jain Building, Behind Amar Talkies, Dhamtari, Tah. And Distt. Dhamtari C.G.

---- Respondents

For Appellant
For Respondent no.2

Shri N.K. Vyas, Advocate.
Shri R.N. Pusty, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****07/12/2018**

1. This appeal under Section 30 of the Employees Compensation Act has been filed by the employer against the judgment dated 06.02.2014 passed by the Commissioner for Employees Compensation, Labour Court, Dhamtari in a case no. 69/WC

Act/2012 Fatal whereby compensation of Rs.8,31,920/- with interest at the rate of 11% per annum from the date of claim petition till realization has been awarded, fastening the liability of paying the said amount on non-applicant no.2/Insurance Company. The Commissioner also imposed 40% penalty of the compensation amount i.e. Rs.3,22,768/- on non-applicant no.1/employer i.e. appellant herein.

2. Brief fact of the case as per averments in the claim petition are that Sunil Muni was working under the employment of non-applicant no.1 Devshri Agro Tech Private Limited. On the date of accident i.e. 16.02.2012 while Sunil Muni was working under the employment of non-applicant no.1 and was doing the work of laying of cables, due to non supply of safety equipments to Sunil Muni, he fell down from the tower and died during the course of treatment on 18.02.2012 in the hospital. On information of the said accident being given by Supervisor of non-applicant no.1 namely Hirendra Kumar Sahu to the police crime under Section 304 of IPC was registered against non-applicant no.1. At the time of accident Sunil Muni was 30 years of age and earning Rs. 9,000/- per month.
3. On claim petition under Section 10 of the Workmen Compensation Act, 1923 being filed by wife and children of the deceased seeking compensation against the death of Sunil Muni with interest and penalty, the Commissioner considering the pleadings of the respective parties and evidence adduced by

them in support thereof by the impugned judgment awarded compensation and imposed penalty as mentioned above.

4. Learned counsel for the appellant has assailed the judgment of the Commissioner only on the ground that the Commissioner was not justified in imposing penalty on the appellant/employer because after the accident the employer took all due care for medical treatment of the deceased, he paid all the medical bills and information of the accident was also immediately conveyed to the police by his Supervisor Hirendra Kumar Sahu. He submits that the Commissioner passed the order of penalty against the employer without recording any reason in this behalf. Reliance has been placed on the decision of Kerala High Court in the matter of **C. Rajan Vs. P.M. Subramonian, (1994) ACJ 25**; decision of Madhya Pradesh Court in **Bank Note Press Vs. Umrao Singh, (1998) 1 LLJ 23** and decision of High Court of Delhi in **Gopal Aggarwal Vs. Munni Devi** passed in **FAO398/2014 & CM Nos. 20667/2014, 20669-20670/2014** dated **10, May, 2018**.
5. On the other hand, learned counsel for the respondent/Insurance Company has supported the impugned judgment.
6. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.
7. Heard learned counsel for the parties and perused and material available on record.

8. On the basis of pleadings of the respective parties and the material available on record, with the consent of the parties, this court vide order dated 24.10.2018 framed following substantial questions of law:

- “1. Whether The Commissioner of learned Labour Court was justified in imposing the penalty upon the employer?
2. Whether the Insurance Company and employer are liable to pay the penalty as per the statutory provision of Section 4A 1 [(3)] (b) of Workmen Compensation Act?”

However, learned counsel for the appellant/employer submits that in the facts and circumstances of the case, he is not making any submission on the second substantial question of law and is assailing the judgment of the Commissioner insofar as it relates to imposition of 40% penalty on the employer on the grounds mentioned above.

9. Chitra Devi AW-1 wife of the deceased, in para 7 of her cross-examination by non-applicant no.1 has specifically stated that half of the expenses incurred on medical treatment of her husband were borne by herself and half of the same were borne by non-applicant no.1. In cross-examination, she has admitted that when her husband/deceased admitted in the hospital she did not go there nor any of her family members went there. Hirendra Kumar Sahu examined by non-applicant no.1, he has stated that after the accident the injured was sent by them to Mamta Hospital, Rajim from where considering his serious condition he was referred to Shri Medishine Hospital for treatment where he remained admitted for two days and thereafter died in the

hospital. The discharge bills of Shri Medishine Hospital and the treatment papers have been filed as Ex.D-6. This witness has further stated that the information regarding the accident was immediately given to the concerned police station vide Ex.D-4. From close scrutiny of the evidence of AW-1, in particular his cross-examination by non-applicant no.1, it is evident that she was in Bihar when her husband died. She admits that when her husband was in the hospital, neither she went to see him in the hospital nor any of her family members went there. As per Ex.D-6 the medical bills were paid and the medical bills of Ex.D-6 have been filed by non-applicant no.1 before the Tribunal. Had the medical expenses been borne by AW-1 as contended by her in para 7 of her evidence to the extent of 50%, she should have produced the medical bills in support thereof. However, no documentary evidence has been adduced by her in support of her contention. Thus, from the facts and circumstances of the case, the evidence adduced by the claimants and the evidence adduced by non-applicant no.1 employer, it can be safely inferred that the entire expenses were borne by the employer.

10. In this case, the accident occurred on 16.02.2012 as per Ex.D-5 i.e. a letter written by non-applicant no.1/employer to the Insurance Company non-applicant no.2 dated 17.02.2012, it is evident that information regarding the accident was immediately conveyed to the Insurance Company. This shows the bonafide conduct of the employer. After the above information being conveyed to the Insurance Company by the employer, the

Insurance company was required to deposit the requisite amount within the stipulated period but it was not deposited by the Insurance Company.

11. The Commissioner has imposed 40% penalty on the employer only on the ground that the compensation amount was not deposited within time, without considering the other relevant aspects of the matter. Thus, considering the facts and circumstances of the case, pleadings of the respective parties, the evidence adduced by them, the fact that immediately after the accident information of the same was duly conveyed by Supervisor of the employer namely Hirendra Kumar Sahu NAW-1 to the police, the information was also given by the employer to the Insurance Company on the very next date of the accident, the employer, provided immediate medical treatment to the deceased and bore the entire medical expenses, the over all conduct of the employer and also keeping in view of decisions relied upon by the appellant, this Court is of the opinion that the Commissioner was not justified in imposing 40% penalty on the employer and it is liable to be reduced to the extent of 10% only.

12. As regards the argument that proper opportunity of hearing to the employer by issuing show cause notice before imposition of penalty has not been granted. Though, the appellant is not pressing this point, however, from perusal of the record and the impugned judgment, it is evident that a particular i.e. issue no.6 was framed in this regard by the Commissioner, proper

opportunity of hearing was afforded to the employer and thereafter considering the evidence and other material available on record, the Commissioner proceeded to impose penalty on the employer. Therefore, it cannot be said that proper opportunity of hearing was not afforded to the employer before imposition of penalty.

13. In the result, the appeal is allowed in part and it is held that Commissioner was not justified in imposing 40% penalty on the employer. The impugned judgment is hereby modified and 40% penalty imposed on the employer is hereby reduced to 10%. If the excess amount has been deposited by the employer and not disbursed to the claimants, the same shall be refunded to him. However, if the amount deposited by the employer in excess of his liability has already been disbursed to the claimants, no recovery of the same shall be made. Rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge