

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 205 OF 2018

1. Smt. Uma Verma, aged about 44 years, widow of Late Rameshwar Verma, caste- Kurmi.
2. Ku. Pratibha Verma, aged about 18 years, daughter of Late Rameshwar Verma, caste- Kurmi.
3. Ku. Divya Verma, aged about 16 years, daughter of late Rameshwar Verma, caste- Kurmi.
4. Smt. Baaharin, aged about 70 years, widow of late Baluram Verma, caste- Kurmi.

Minor/Appellant No.3, through next friend, natural guardian Smt. Uma Verma (Now Appellant No.3 become major)

All R/o Village- Mohranga, Post- Kharora, P.S. Kharora, Tahsil Tilda, District Raipur (C.G.)

... Appellants

versus

Om Prakash Agrawal, S/o Late Ramjee Lal Agrawal, R/o Ward No.8, Kharora, P.S. & Tahsil- Kharora, District Raipur (C.G.)

... Respondent

For Appellants : Mr. Malay Kumar Bhaduri, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/02/2018

1. The present is an appeal under Section 30 of the Employees' Compensation Act.
2. Challenge in the present appeal is to the judgment dated 21.11.2017 passed by the Commissioner for Employees' Compensation-cum-Labour Court No.2, Raipur, in Civil Case No. 36/E.C.Act/2014/Fatal.
3. The solitary ground of challenge by the appellants in the present appeal is the non-consideration of the issue, whether the appellants would be entitled for any penalty from the respondent-employer.
4. Learned counsel for the appellants submits that the learned Commissioner vide Issue No.7 had specifically framed an issue, *whether the appellants were entitled for penalty from the employer?* But, while answering the issues, the Issue No.7 has not been discussed or dealt with by the learned Commissioner, neither has the Commissioner decided the

said issue. Though in the impugned judgment it has been reflected that the said issue has been answered in the negative, but a perusal of the judgment would show that there is no discussion whatsoever on the said issue so far as grant of penalty is concerned.

5. At this juncture, it would be relevant to refer to the provisions of Section 4A(3)(b) of the Employees' Compensation Act, which deals with the grant of penalties:

“4A. Compensation to be paid when due and penalty for default.–

(1) *** *** ***

(2) *** *** ***

(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) *** *** ***

(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 per cent 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.”

6. Though there was a specific claim raised by the appellants and a specific issue also having been framed, *i.e.*, Issue No.7, it was incumbent upon the Court below to have decided the said issue, but the same has not been decided by the Court below. It appears that the said issue has either been skipped from the mind of the Court or the Court has not dealt with the said issue. Once when the Issue No.7 has been framed by the Court below, it was necessary for the Court to have decided the said issue either in the affirmative or in the negative, discussing the entitlement part particularly keeping in view the provisions of Section 4A(3)(b) of the Employees' Compensation Act.

7. Under the given circumstances, this Court does not intend to keep the appeal pending by admitting the same or by issuing notice to the respondent-employer. This Court feels that ends of justice would meet if the matter is remitted back to the Court below for consideration on the said issue alone.

8. Accordingly, the impugned judgment is set aside to the extent of non-consideration of the issue of penalty part. Remaining part of the judgment shall remain intact as has been awarded by the Court below. The matter stands remitted back to the Court below only for adjudicating upon the issue so far as grant of penalty part is concerned, *i.e.*, Issue No.7, keeping in view the provisions of Section 4A(3)(b) of the Employees' Compensation Act.

9. Let the appellants appear before the Court below on 28.2.2018 on which date the Court below may issue notice to the employer, seeking his explanation as is required under Section 4A(3)(b) of the Employees' Compensation Act as to why penalty should not be imposed under the prevailing circumstances and thereafter proceed further to decide the Issue No.7.

10. It is made clear that this Court has not expressed any opinion on the merits of the case. The Court below shall be free to decide the matter purely in accordance to its merits.

11. With the aforesaid directions, the appeal stands allowed in part and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge