

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1139 of 2011**

Adhin Ram Sinha S/o Shri Hriday Ram Sinha, aged about 42 years,
Contractor for Shiv Shakti Construction, R/o Sangam Chowk, Tulsipara,
Rajnandgaon, C.G.

---- Appellant**Versus**

1. Darshan Lal Sahu S/o Shri Tejuram Sahu, aged about 46 years,
2. Smt. Devantin Bai W/o Shri Darshan Lal Sahu, aged about 42 years.
Both R/o Village Murpara, Post- Surgi, P.S.- Lalbag, Distt. - Rajnandgaon,
C.G.
3. National Insurance Comp. Ltd. Through- Branch Manager, Kamthi Line,
Rajnandgaon, C.G.

---- Respondents

For Appellant	:	Shri NK Vyas, Advocate.
For Respondents No. 1&2	:	Shri Wakar Naiyar, Advocate.
For Respondent No.3	:	Shri A.K. Athale, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment on Board****19.01.2018**

1. The present appeal under Section 30 of the Workmen's Compensation Act, 1923, has been filed by the appellant-employer assailing the award dated 15.09.2011 passed by the Commissioner for Workmen Compensation, Labour Court, Rajnandgaon, in Case No.47/WC Act/2008/Fatal.
2. The solitary question of appeal was whether the Commissioner while passing the award was justified in awarding penalty without giving an opportunity to the employer to show cause why penalty should not be imposed ?
3. The issue involved in the present case is no longer res integra for the reason that it has been, by way of catena of decisions both by the Supreme Court as well as by the High Courts held that any penalty imposed by the Labour Court under the provisions of the Act, 1923, it is mandatory on the part of the Labour Court to show cause to the employer seeking

explanation as to why penalty should not be imposed? In this regard, proviso to Section 4-A(3)(b) of the Act, 1923 is very clear, that an order of penalty shall not be passed under clause-b without giving reasonable opportunity to the employer to show cause why it should not be imposed.

4. A perusal of record would show that the Commissioner while passing the award and imposing penalty has not issued any show cause notice to the employer (the present appellant) and has straightway while adjudicating the claim application itself has awarded the penalty also. This, in view of the provisions of Section 4-A(3)(b) of the Act, 1923, is not sustainable and the award to the extent of imposition of penalty to the tune of Rs.1,02,937/- is bad in law and is in contravention to the aforesaid statutory provisions and the same is accordingly set aside.
5. The appeal thus stands allowed. The matter is remitted back to the Commissioner, Labour Court, Rajnandgaon. The Commissioner shall issue appropriate notice to the employer-the present appellant, and on his explanation thereafter proceed to decide whether penalty has to be imposed or not. If yes, to what extent?
6. Since all the parties are present, they are directed to remain present before the Commissioner, Labour Court, Rajnandgaon, on 26.02.2018.
7. Registry is directed to send back the records of the case forthwith.

Sd/-

(P.Sam Koshy)
Judge