

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1198 of 2011**

M/s. D.P. Agrawal, (Railway Contractor), R/o. Jaistambh Chowk,
Dongargarh, District Rajnandgaon

---- Appellant**Versus**

1. Durga Bai, Aged about 22 years, W/o. Late Panchram Chandrawanshi,
2. Poshan, Aged about 2 years, Being Minor, Through her mother Durga Bai, Aged about 22 years, W/o. Late Panchram Chandrawanshi,
3. Phool Singh, Aged about 60 years, S/o. Suklal,
4. Baisakhinbai, Aged about 55 years, W/o. Phoolsingh.
All R/o. Village Umartola Andi, Tahsil and Thana Dongargarh, District Rajnandgaon Chhattisgarh (Claimants)
5. Shriman MahaPrabandhak, South East Central Railway, Bilaspur.
6. Divisional Railway Manager, South East Central Railway, Nagpur.
7. Divisional Railway Manager (Personal) South East Central Railway, Nagpur.

----Respondents

For Appellant	:	Mr. Parag Kotecha, Advocate
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Hon'ble Shri Justice P. Sam Koshy**Order on Board****24/01/2018**

1. None for the respondents though served. The matter was taken up yesterday. Since there was no representation on behalf of the Railway department, the matter was taken up today. Today also there is no representation on behalf of the Railway department. Since the appeal is of year 2011, we proceed to decide the appeal with the available record and the assistance provided by the counsel for the appellant.
2. The present appeal is by the employer/contractor. The challenge is to the award dated 27.09.2011, passed by the Commissioner for Workmen's Compensation, Labour Court, Rajnandgaon,

Chhattisgarh, in Case No. 40/W.C.Act/2009/Fatal. Vide the impugned award, the Commissioner in claim case under Workmen's Compensation Act has awarded a compensation of Rs.4,23,580/- and at the same time the Commissioner has also imposed a penalty of 25% of the said amount i.e. Rs.1,05,895/- against the present appellant.

3. The present appeal has been confined to the extent of the penalty being imposed against the present appellant. This Court had admitted the appeal on 14.12.2011 on the following substantial question of law:

“Whether the Commissioner for Workmen's Compensation was justified in awarding amount of penalty against the appellant without complying the proviso to Section 4A(3) of the Workmen's Compensation Act, 1923.”

4. From the admitted factual matrix what has been reflected is that an accident had taken place on the 29.05.2009, in which Panchram Chandrawanshi, the deceased succumbed to the injuries that he suffered. The present appellant was a contractor engaged by the Railway department for some work.
5. Since, neither the appellant/the employer of the deceased nor the Railway authorities/principal employer, where the present appellant/contractor was discharging his duties had deposited the compensation under the Workmen's Compensation Act, the legal representatives of the deceased filed a claim application before the Commissioner for Workmen's Compensation, Rajnandgaon and the case was registered as Case No. 40/W.C.Act/2009/Fatal. The present appellant and other respondents had contested the case on merits and finally the award was passed after about 2½ years from

the date of accident i.e. on 27.09.2011. While passing the award, since there was a finding of deliberate non-compliance of the provisions of the Workmen's Compensation Act by the present appellant, the learned Commissioner has imposed a penalty of 25% upon the present appellant. Feeling aggrieved of which the present appeal has been filed.

6. The solitary ground of challenge to the award is so far as imposition of penalty is concerned. The counsel for the appellant submits that the Commissioner has not complied with the provisions of Section 4-A of the Workmen's Compensation Act before imposing the penalty in as much as no show cause notice was issued before imposing the penalty, which was a mandatory requirement under the Act and the award to that extent is bad in law.
7. This Court in the light of a catena decisions of this Court as also by the Division Bench of this Court to quote a couple of judgments is the judgment of the Division Bench reported in **(2012) 134 FLR 203**, which is also reported in **(2011) 5 MPHT 35 (CG)** in the case of **“Chhattisgarh State Civil Supplies Corporation Limited vs. Gurubari Bai and Others”** wherein in paragraph No.11 it has been held by the Division Bench as under:

It is also to be noticed that penalty @ 30% has been imposed by the Commissioner without giving any reasonable opportunity. In this regard, proviso to sub-section (3) of section 4-A, as quoted above, clearly provides that no penalty can be imposed without affording reasonable opportunity to the employer to show cause why it should not be imposed. Therefore, it is mandatory provision and before imposing penalty, opportunity was liable to be given which has not been given in the instant case.

8. A similar view has also been taken by this Bench recently in a decision in **“Adhin Ram Sinha vs. Darshan Lal Sahu & Others”**,

decided in MAC No. 1139/2011, decided on 19.01.2018, wherein in paragraphs No. 4 and 5, this Court has held as under:

“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?”

9. Taking support of the aforesaid two judgments, this Court has no hesitation in reaching to the conclusion that before imposition of the penalty by the learned Commissioner no show cause notice separate before imposition of penalty was passed. The penalty was passed along with the passing of the main award itself. The mandate of the Act says that there ought to had been a separate show cause issued to the employer seeking his explanation as to why in the given facts, the penalty should not be imposed. Though in paragraph No.9, there is a categorical finding by the Commissioner stating that the present appellant inspite of full notice and knowledge of the accident and the resultant death of the deceased, they have not paid any compensation, hence penalty has been imposed. However, it is only the lack of issuance of a show cause notice before penalty is imposed, which vitiates the award to the extent of imposing of penalty.
10. In view of the above, this Court set-asides the impugned award to the extent of imposition of penalty of 25% amounting to

Rs.1,05,895/- and the matter is remitted back to the Commissioner to decide the issue of imposition of penalty after affording an opportunity of hearing to the present appellant.

11. Since the appellant is present before the Court, let the appellant remain present before the Labour Court on the 28th of March, 2018.
12. Meanwhile, the Registry should ensure that the records are sent back to the concerned Labour Court at the earliest.
13. The Commissioner would be at liberty to pass a fresh order determining the issue of penalty in accordance with law.
14. Since the matter is being remitted back, it shall be left open for the Commissioner for Workmen's Compensation for imposing suitable penalty without being influenced by the penalty imposed by the earlier Presiding Officer, which has been set-aside by this Court.
15. The matter stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge