

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 122 of 2019**

- Smt. Kamla Singh (Dead) W/o Manohar Singh,
 - 1.(a) Manohar Singh (Dead)
 - 1.(b) Thakur Dipendra @ Baba S/o Manohar Singh
 - 1.(c) Devendra Singh @ Batu S/o Manohar Singh

All are resident of R/o Tilak Nagar, Main Post Office Bilaspur, District-Bilaspur, Chhattisgarh (Not 1a. Manohar Singh since dead)

----Applicants**Versus**

1. Mus Dulin Bai W/o Late Shyam Singh
2. Suraj Singh S/o Late Shyam Singh (For Respondent No.2 a minor Through Natural Guardian Mus Dulin Bai, Respondent No.1)
3. Mukhiram Gond S/o Late Ratiyaram
4. Mogra Bai W/o Mukhiram

All are R/o Rahangi, Police Station Hirri, Tahsil And District Bilaspur, Chhattisgarh.

5. The New India Insurance Company Ltd. Through-Branch Manager, Branch Office Rajendra Nagar Chowk, Bilaspur, District- Bilaspur, Chhattisgarh.

---- Respondents

For Applicants	Shri S.P. Kale, Advocate.
For Respondent Nos. 1 to 4	Smt. Prabha Sharma, Advocate.
For Respondent No.5	Shri Tarkeshwar Nande, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order on Board****17/10/2019**

1. Heard on **I.A. No.1**
2. This is an application for condonation of delay of 23 days in filing the Review Petition.

3. For the reasons mentioned in the application which is duly supported by affidavit, the same is allowed and delay in filing the Review Petition is condoned.
4. Heard on admission.
5. The petition being arguable is admitted for hearing.
6. With the consent of both the parties, review petition is heard finally.
7. By way of this review petition, the applicants have sought modification in the order dated 11.03.2019 passed in MAC No.991 of 2014. As per the order of this Court, applicants/employer were given two weeks time to file their explanation on the issue of penalty as challenged in this appeal.
8. Learned counsel for the applicants/employer submits that the employer had filed an appeal before this Court against the order of imposition of penalty by the Commissioner on the ground that before passing such order the Commissioner did not issue notice to the employer as contemplated under Section 4(A)(3b) of the Act. However, this Court vide order dated 11.03.2019, while observing on the one hand that since a particular issue (Issue No.7) regarding imposition of interest and penalty was framed by the Commissioner, it itself amounts to providing of sufficient opportunity to the parties, mere non giving of notice as required under Section 4(A)(3b) of the Act would not vitiate the order of imposition of penalty, on the other hand thought it appropriate to decide the said issue of penalty in the appeal by providing

opportunity to the applicants to explain in this regard within two weeks. The contention of the applicants is that if the issue of penalty is decided by the Commissioner, the employer has the right to appeal against such order before this Court but if the said issue is decided by this Court itself, the employer would be deprived of right to appeal which would adversely affect the interest of the employer.

9. Learned counsel for the respondents submit that this Court vide order dated 11.03.2019 had rightly issued notice to the employer seeking explanation on the issue of imposition of penalty and as such the employer has got full opportunity and right to argue the matter with regard to imposition of penalty. Therefore, there is no need to modify or set aside the order dated 11.03.2019 passed by this Court.

10. I have heard learned counsel for the parties and perused the material available on record.

11. It is not disputed by both the parties that as per the order dated 11.03.2019 passed by this Court explanation was sought from the employer and according to counsel for the applicants/employer the explanation has already been submitted before this Court. As per provisions of Section 4(A)(3b) of the Act, before passing order of penalty against the employer, notice is to be issued to the employer to explain as to why such order should not be passed. Keeping in view the facts and circumstances of the case, the interest of the parties, the manner in which the order of penalty was passed by the Commissioner and the provisions of Section

4(A)(3b) of the Act, this Court had passed order dated 11.03.2019 thereby seeking explanation from the employer on the issue of penalty. The employer has every right to argue on the legal issue of issuance of notice by this Court or the Commissioner for the purpose of passing order in respect of penalty, which shall be considered by this Court at the time of final hearing of the appeal and the order dated 11.03.2019 passed by this Court shall not affect the right of the employer while advancing arguments in respect of the issue of penalty and shall not come in the way of final disposal of the appeal.

12. With the aforesaid observations, the review petition stands disposed of.

-Sd-
Gautam Chourdiya
Judge