

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

First Appeal No. 01477 of 2018

District : Latur

Prabhakar s/o. Ambadas Dongare,
Age 63 years,
Occupation Business,
R/o. Engineer Colony,
Yamuna Society,
Old AUSA Road, Latur

And

Shivam Travels & Taxi Services,
Municipal Corporation Shopping
Complex, Shop No.2,
Gandhi Chowk, Latur.
(Owner of travel bus bearing
Reg. No. MH-24/AB-8070.

.. Appellant
(Original
respondent
no.02)

versus

1. Sow. Shanubai w/o. Ashok
Suryawanshi,
Age 54 years,
Occupation Household.
2. Ashok s/o. Mahadu Suryawanshi,
Age 57 years,
Occupation Labour.

Both R/o. Deepjyoti Nagar,
Near Balaji Temple, Ring Road,
Latur, Taluka & Dist. Latur.

3. Branch Manager,
Cholamangalam MS General
Insurance Co. Ltd.,
Vikas Nagar,
Near ESI Hospital,
On Natural Ice Cream Building,
Hotagi Road, Solapur,
Taluka & Dist. Solapur.

.. Respondents
(Nos.01 & 02 -
Original
claimants
&
No.03 -
Original
respondent no.02)

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Mr. S.S. Chillarge, Advocate, for the appellants.

*Mr. S.S. Rathi, Advocate, for respondents no.01
and 02.*

Respondent no.03 served (Absent).

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the judgment : 01st July 2019.**

**Date of pronouncing
the judgment : 09th July 2019.**

JUDGMENT :

01. Present appeal has been filed by the original respondent no.02 - employer, challenging the amount of penalty imposed on him by the learned Commissioner for E.C. Act & Judge, Labour Court, Latur, in WCA No.76 of 2016, dated 11-01-2018, under Section 4-A(3)(b) of the Employees' Compensation Act, 1923.

02. The present respondents no.01 and 02 are the original applicants who had filed application for getting compensation under the Employees' Compensation Act, 1923, contending that their son late Shri Ajay @ Santosh Ashok Suryawanshi expired in an accident out of and in the course of his employment on 15-06-2016. The only issue raised in

the present appeal by the employer is regarding the imposition of penalty to the extent of 50 % of the amount of compensation awarded i.e. Rs. 6,79,140/- together with interest at the rate of 12 % per annum. It is the contention of the appellant, that without issuing notice as contemplated under Section 4-A(3) (b) of the Employees' Compensation Act, it could not have been imposed upon him. According to the appellant, a show cause notice ought to have been issued to him earlier to the pronouncement of the judgment.

03. Heard learned Advocate Shri S.S. Chillarge for the appellant and learned Advocate Mr. S.S. Rathie for respondents no.01 and 02. Respondent no.03, though served, remained absent.

04. It has been vehemently submitted on behalf of the appellant, that there is no dispute that deceased Ajay was employee of the appellant and he expired in an accident. The appellant is also not denying or challenging the relationship and the fact that Ajay expired during the course of the employment. The appellant is also not denying the fact that when the accident had taken place on 15-06-2016, the appellant had immediately on 16-06-2016 informed the fact to the Insurance Company by filing claim no. 3373037243. Whatever duty is cast on the appellant as employer was performed by him and then

it was for the Insurance Company to pay the compensation to the legal heirs of the employee. No doubt, the original claimants had issued notice claiming compensation from the appellant, yet, when he has already taken the steps and informed the fact of accident to the Insurance Company, the employer cannot be said to be liable to pay the amount of compensation. The learned Commissioner erred in observing that the employer has failed to explain why compensation amount was not deposited in the office of Commissioner within the given time limit. In fact, if show cause notice would have been issued to the appellant, he would have explained it.

05. Further submission has been made on the behalf of the appellant, that unless and until the said notice is issued, as contemplated under Section 4-A(3)(b) of the Act, appellant would not have come in picture to satisfy any claim of the claimants. When such notice is mandatory and there is no observance of the same by the learned Commissioner, the learned Commissioner erred in imposing penalty on the appellant. He placed reliance on the decision in *Ved Prakash Garg Vs. Premi Devi & others* [(1997) 8 SCC 1], wherein it has been observed thus:-

" No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under Section 4-A(3) may start running for the purpose of attracting

interest under sub-clause (a) thereof in case where provisional payment has to be made by the insured employer as per Section 4-A(2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then Section 4-A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of Section 4-A(3)(a) of the Compensation Act. But similar consequence will not follow in case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by Section 4-A(3)(b) of the Compensation Act after issuing show-cause notice to the employer concerned who will have reasonable opportunity to show cause why on account of some justification on his part for the delay in payment of the compensation amount he is not liable for this penalty. However, if ultimately, the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the delay, then the penalty would get imposed on him. That would add a further sum up to 50 % on the principal amount by way of penalty to be made good by the defaulting employer. So far as this penalty amount is concerned, it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Workmen's Compensation Act."

Further reliance has been placed on the decision in *Praveenbhai S. Khambhayata Vs. United India Insurance Company Limited & others* [(2015) 11 SCC 417], wherein similar view has been taken by the Hon'ble Apex Court.

06. Per contra, learned Advocate appearing for respondents no.01 and 02 submitted that the accident had taken place on 15-06-2016. The claimants met and requested him to give compensation amount. However, it was refused and, therefore, notice was issued through Advocate by the claimants on 03-08-2016 claiming the amount of compensation. Said notice was received by the appellant, however, there was no reply to the same nor it was complied with. Under such circumstance, they had no option but to knock the doors of the learned Commissioner. After the petition was filed, present appellant was served with the notice thereof. He had appeared and filed say. No such defence or fact was brought on record that such claim was made to the Insurance Company by the appellant on 16-06-2016 itself. Evidence has not been adduced by the respondent no.01 to that effect. In the petition itself, the claimants had made clear prayer for grant of penalty. Under such circumstance, it was expected from the employer to lead evidence if he intended to deny the liability to pay penalty. Under such circumstance, when notice of the petition was given to him, it was sufficient

compliance of Section 4-A(3)(b) of the Act. It was not necessary for the learned Commissioner to issue separate written notice to the appellant. In order to support his contention, he relied on the decision of this Court in Lalitraj Brijlal Khurana Vs. Shriram Ruprao Ghuge & another, in First Appeal No. 612 of 2012, dated 04-07-2013, wherein this Court after considering the ratio laid down in *Ved Prakash Garg (supra)* and other authorities, observed thus :-

" Reading of all the authorities would show that the salient principle of audi alteram partem i.e. no adverse order be passed unless the affecting party is heard, is to be followed, is the spirit of the proviso to the sub-clause (b) of sub-section (3) of section 4-A of the Workmen's Compensation Act. Technicality of issuing separate notice or filing separate proceeding is neither contemplated by law nor emphasized in any of the authorities on which reliance is placed. "

Therefore, the penalty that has been imposed on the appellant is perfectly justifiable.

07. I fully agree with the submissions on behalf of respondents no.01 and 02. At the outset, as regards the facts of this case are concerned, the appellant is not denying that there was employee employer relationship between Ajay and himself. It is also not denied that Ajay expired in vehicular accident when he was on duty in bus owned by the appellant. He was Cleaner on that bus. Under such circumstance, when the appellant is not disputing the

amount of compensation that has been worked out by the learned Commissioner, for which the Insurance Company is made liable, then the appellant is not entitled to challenge any of those points on which the said amount of compensation was arrived at. The only point which he intends to challenge is the imposition of penalty to the extent of 50 % of the compensation amount. The challenge is only restricted to the point of alleged absence of notice under Section 4-A(3)(b) of the Workmen's Compensation Act. The proviso provides that the penalty cannot be imposed unless show cause notice is issued to the employer. The Act does not prescribe that there should be a written notice. Therefore, if it is proved that the employer has not taken steps to give compensation to the heirs of the deceased employee, then penalty is required to be levied.

08. Now, in this case, though the accident had taken place on 15-06-2016, it appears that till the notice U-14 dated 03-08-2016 was issued to the appellant, which he did not claim, no efforts were made by the employer - appellant to give compensation to the claimants. Perusal of the written statement filed by the appellant would make it clear that there is absolutely no whisper about filing of claim no. 3373037243 by him with the Insurance Company on 16-06-2016. There is no hurdle for the appellant to produce the said claim document and make averment

regarding the same in his written statement. In his testimony, claimant no.01 has made a categorical statement about demand of compensation by claimants to appellant and also regarding issuance of notice. However, since the appellant remained absent for the cross examination, there is no cross on behalf of him. That means, whatever has been deposed by claimant has gone unchallenged on record. Now, for the first time in appeal, the appellant is coming with a case that he had already filed claim with the Insurance Company but cognizance of the same has not been taken by the learned Commissioner. In fact, the learned Commissioner was not made aware about any such steps taken by the appellant, there was no question of not taking note of the same. The purpose for which provision for imposing penalty has been made, is required to be considered. When an employee i.e. labour class expires, the legal heirs require his death to be compensated as early as possible and if there is delay and deliberate act to avoid giving compensation, then definitely penalty deserves to be imposed. The act of employer cannot be said to be over by merely filing claim form. He should see that the Insurance Company gives the amount of compensation to the legal heirs of such an employee as early as possible. This duty appears to have not been discharged by the appellant in the present case.

09. Now, as regards the ratio laid down Ved

Prakash Garg (supra) as well as *Praveenbhai S. Khambhayata's case (supra)*, is concerned, there is no question of taking any contrary view. The said notice under Section 4-A(3)(b) of the Act is definitely mandatory. But as aforesaid, the Act does not contemplate any written notice to be issued to the employer. Perusal of the petition filed by the claimants would make it very clear that they had intention to claim penalty apart from amount of compensation. The notice of the petition was duly given to the present appellant and in pursuant to the same, he has filed the written statement. That means, he was very much aware about the prayer clause in the petition. That can be taken to be sufficient notice as contemplated under Section 4-A(3)(b) of the Act. I agree with the observations of this Court in *Lalitraj Khurana's case (supra)*.

10. Therefore, merely because a separate written notice was not given by the learned Commissioner before pronouncement of judgment on 11-01-2018 will not make the order regarding payment of penalty illegal. Since the appellant himself had failed to give explanation as to why he did not give compensation within the time limit, so also, it can be added that he did not see that the Insurance Company pays the compensation amount within limitation to the claimants, the penalty imposed under Section 4-A(3)(b) of the Act is perfectly legal. There is absolutely no merit in the present

appeal and deserves to be dismissed with costs.

11. Hence, the following order :-

The appeal is hereby dismissed. The appellant to pay costs of Rs. 5,000/- [Rupees five thousand] to respondents no.01 and 02.

(Smt. Vibha Kankanwadi)
JUDGE

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