

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

FIRST APPEAL NO.2874 OF 2017

1. Nagarjun Construction Co. Ltd.,
Electrical Division, Uma Enclave,
3rd Floor, Road no. 9,
Banjara Hills, Hyderabad.
 2. Nagarjun Construction Co. Ltd.
Regional office Flat no. A-67/11.
Textile Complex, near Natural
Sugar Office, MIDC Latur.
Through its authorized person,
Mr. V. Satish age 32 Occu. Service,
presently working as Asst. Eng.
(electrical) R/o door 1-2-63
Agraharam, pithapuram, east
Godavari district.
- = APPELLANT.

VERSUS

1. Ishwar Prakash Morajkar
Age: 24 years, Occu. Nil.
R/o Kandari, Tq Paranda,
Dist. Osmanabad
 2. Executive Engineer,
Maharashtra State Electricity
Distribution Co. Ltd.
(MSEDCL) Osmanabad
 3. The Manager,
IFCO Tokiya General Insurance Co. Ltd.
Through :- Kishor Hanumant Modani
1st floor, Indani Building,
Above Latur Saree Centre,
Old Cloth Bazar, Latur.
- = RESPONDENTS

Shri A.S. More, Adv. for Appellants;
Shri S.B. Choudhari FOR RESP.NO 1;
Respondent 2 Served
Shri S.G. Chapalgaonkar Adv. for Resp.for No.3;

CORAM : P.R.BORA, J.**DATE : 20th February, 2019****ORAL JUDGMENT**

1. With the consent of learned counsel appearing for the parties, the present appeal is taken up for final disposal.

2. The appellants have challenged the Judgment and Award passed by the Commissioner for Employees compensation (hereinafter referred to as the Commissioner) in WCA No.22/2009 decided on 24th January, 2014. The aforesaid application was filed by present Respondent No.1, claiming compensation on account of the injuries received to him during the course of his employment with the present appellants.

3. The learned Commissioner, after having considered the evidence on record, held Respondent No.1, who is hereinafter referred as employee, entitled for the total compensation of Rs. 5,20,584/- with interest thereon @ 12% p.a. w.e.f. 21.7.2008 till its realization and also imposed the penalty to the tune of Rs.2,60,292/- and also directed the present appellants to pay interest on the said amount of penalty @ 12% p.a. w.e.f.

21.7.2008. Aggrieved by, the appellants (herein after referred to as employers) have preferred the present appeal.

4. Shri More, learned counsel appearing for the employers, though has raised several grounds in exception to the impugned Judgment and Award, after having considered the submissions and after having gone through the impugned judgment and record, it is revealed that the objection raised by the appellants as about imposition of the penalty to the tune of Rs.2,60,292/- and to award interest on the said amount of compensation @ 12% p.a. only, deserve to be considered. Though the appellants have disputed employer-employee relationship, after having gone through the discussion made by the learned Commissioner in the impugned judgment, it does not appear to me that the said ground would sustain. It also does not appear to me that there is any scope for any interference in the amount of compensation computed by the Commissioner to the tune of Rs.5,20,584/-.

5. Shri Choudhari, learned counsel appearing for Respondent No.1, i.e. original claimant, submitted that a specific issue was framed as about

imposition of penalty and after having considered the submissions made by the present appellants on the said issue, the Commissioner has consciously imposed the penalty of Rs.2,60,292/- and that is perfectly in accordance with the provisions made in that regard. The learned counsel in the circumstances, submitted that no case is made out by the appellants for causing any interference in the amount of penalty. The learned counsel was however fair in submitting that on amount of penalty, interest would not lie.

6. In view of the submissions made, when I perused the impugned judgment, apparently it is felt that while imposing the amount of penalty, the learned Commissioner has failed in appreciating the overall circumstances in the matter. It is true that Section 4A(1)(3) of the Act provides for imposition of penalty to the extent of 50% of the total amount of compensation, in case default is made in payment of compensation by the employer. However, the said provision cannot be interpreted to mean that in every case, penalty shall be awarded at the optimum rate. In the present matter, it appears that there were certainly

genuine objections raised by the appellants and that was the reason that the appellants did not deposit the amount within stipulated period. The appellants have now deposited an amount of Rs. 5,20,584/- at the time of filing of the appeal itself. Considering the circumstances, which are surfaced on the record, it appears to me that this was not the fit case wherein the learned Commissioner should have imposed optimum amount of penalty. In the circumstances, the amount of penalty deserves to be decreased. According to me, if over and above amount of compensation, penalty to the extent of Rs.1,00,000/- is imposed on the appellants, it would meet the ends of justice. To the aforesaid extent, the impugned judgment deserves to be modified. It is clarified that no interest shall be payable on the amount of penalty. The employer is however expected to pay the amount of penalty as well as interest on the principal amount of compensation within reasonable period of three months from the date of this judgment. Save and except the modification in the amount of penalty, the other part of the order of the learned Commissioner is maintained as it is.

7. The appeal thus stands partly allowed in the aforesaid terms. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/