

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 349 of 2014**

- Mr. Ramjilal Jagannath Partnership Firm Danipara Raigarh C.G.,

---- Appellant**Versus**

1. Smt. Kusumdevi, W/o Late Rajendra Sharma, aged about 42 years.
2. Chintamani Sharma, S/o Late Rajendra Sharma, aged about 27 years.
3. Sudhir Sharma, S/o Late Rajendra Sharma, aged about 23 years.
4. Akash Sharma, S/o Late Rajendra Sharma, aged about 20 years,
All R/o Kotra Road, Raigarh, Tah. & Distt. Raigarh C.G.,
5. Oriental Insurance Company Limited, Branch Manager, The Oriental Insurance Company Limited, Branch Office- Itvari Bazar, Raigarh C.G.

---- Respondents

For Appellant	:	Mr. K.P.S. Gandhi, Advocate
For Respondent No.1 to 4	:	None.
For Respondent No.5	:	Mr. Pankaj Agrawal, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board**Per Parth Prateem Sahu, J****17/11/2020**

1. Appellant-employer has preferred this appeal under Section 30 of the Employees' Compensation Act, 1923 (for short 'the Act of 1923') challenging the order/award dated 31.01.2014 passed by the learned Commissioner, Employees' Compensation Act-cum- Labour Court, Raigarh in Case No.194/WC Act/2002 Fatal, thereby awarding Rs.2,19,300/- with interest plus 50% of the awarded compensation as 'penalty' to claimants/ respondents No.1 to 4 and directing appellant herein to pay the amount of penalty.

2. Facts of the case, in brief, are that Rajendra Sharma was employed as Driver in the truck bearing registration number MP26-A-0888, owned by non-applicant No.1 and insured by non-applicant No.2. In the night intervening 25.5.2001 & 26.5.2001, Rajendra Sharma under the employment of non-applicant No.1 was driving aforementioned truck loaded with dolomite, going from Bilaspur to Raigarh. On the way near village Botalda, he was attacked and assaulted by some unknown persons with intention to commit robbery. Rajendra Sharma died due to injuries inflicted upon him. Incident was reported in the concerned police station by one Dharampal Singh, driver of another truck bearing registration number MIL-7055.
3. Claimants, who are widow & children of deceased, have filed an application under Section 10 of the Act of 1923 before the Commissioner seeking compensation on account of death of Rajendra Sharma in an accident arising out of and during the course of employment.
4. Non-applicant No.1-employer submitted reply to the application admitting the fact that Rajendra Sharma was murdered, but employment of deceased with non-applicant No.1 was denied. It was also admitted that whenever there was emergent need of a driver, non-applicant No.1 engages deceased as substitute driver. It was also admitted that deceased was a valid license holder and on the date of accident, the truck in question was insured with non-applicant No.2.

5. Upon appreciation of pleadings and evidence placed on record by the parties, Commissioner vide order dated 20.12.2002 held that deceased Rajendra Sharma was under the employment of non-applicant No.1 as Driver on 25.5.2001; he died on account of accident arising out of and during the course of employment, awarded compensation of Rs.2,19,300/- with penalty at the rate of 50% of the amount of compensation i.e. Rs.1,09,650/- and interest @ 12% p.a. from the date of accident till its realization. The Commissioner directed non-applicant No.1-employer to satisfy the amount of penalty.
6. Against the order dated 20.12.2002 appellant-employer preferred MA No.148/2003 before the High Court which came to be disposed off vide order dated 24.7.2013. In that appeal the challenge is with regard to imposition of penalty without issuing show-cause notice and without affording opportunity of hearing to the employer as envisaged under Section 4A (3) (b) of the Act of 1923. The learned Single Judge taking into consideration the provisions of law has allowed the appeal in part, set aside the order dated 20.12.2002 so far as it relates to award of penalty, remitted back the case to the Commissioner to pass award/order afresh only in respect of award of penalty after affording reasonable opportunity of hearing to the employer.
7. After receipt of case on remand, the Commissioner drawn proceedings afresh, issued notice to respective parties and thereafter passed the impugned order awarding 50% of the

awarded amount of compensation as penalty and held the employer liable to pay amount of penalty.

8. Mr. Gandhi, learned counsel representing appellant-employer submits that the Commissioner while drawing proceeding on receipt of case on remand has not complied with the direction issued by the learned Single Judge in MA No.148/2003, not issued specific notice with regard to imposition of penalty and fastened liability upon appellant. Hence, there was again non-compliance of the provisions of Section 4A (3) (b) of the Act of 1923. He contended that unless and until there is specific notice in this regard, as directed in MA No.148/2003, the impugned order awarding penalty to the extent of 50% and fastening liability upon appellant is bad in law and liable to be set aside.
9. When the matter is called out for hearing, there is no representation on behalf of respondent-claimants.
10. Mr. Pankaj Agrawal, learned counsel representing respondent No.5-Insurance Company opposes the submissions made by learned counsel for appellant and submits that the Commissioner after receipt of case back on remand, drawn fresh proceeding, granted opportunity of hearing and producing evidence, but appellant employer failed to produce any evidence on the issue. He submits that the Commissioner is well within four corners of law in awarding penalty of 50% as provided under Section 4A (3) (b) of the Act of 1923.
11. We have heard learned counsel for the respective parties and

perused the record.

12. The only ground raised by learned counsel for appellant in this appeal is with regard to non-issuance of separate and specific notice by using terminology show-cause notice 'as to why penalty to the extent of 50% be not imposed upon employer'. The question which arises for consideration is whether without issuance of such notice the entire proceeding drawn by the Commissioner is vitiated and as such, the order passed by the Commissioner imposing penalty and fastening liability upon the employer is not sustainable.
13. As per submission made by learned counsel for the appellant himself, appellant has earlier filed an appeal against order dated 20.12.2002 passed by the Commissioner challenging imposition of penalty and the learned Single Judge allowed the said appeal in part, set aside the impugned order so far as it relates to imposition of penalty and remanded back the case to the Commissioner for deciding the issue of penalty afresh after giving opportunity of hearing to the parties concerned.
14. Perusal of the order dated 24.7.2013 passed in MA No.148/2003 would show that while setting aside part of the impugned order by which penalty has been awarded and remanding back the case, the learned Single Judge had directed for appearance of the parties before the Commissioner on 29.8.2013. Appellant was well aware of the fact that the case has been remanded back to the Commissioner with a specific direction to decide the issue of penalty afresh.

15. Perusal of order sheets recorded by the Commissioner after remand of the case would show that on 2.8.2013 the Commissioner had issued notices to the parties for their appearance. On 9.1.2014 the matter was fixed for recording of evidence of non-applicant No.1-employer, but there was no representation on behalf of non-applicant No.1, therefore, as a last opportunity, the case was fixed on 28.1.2014 for recording of evidence of non-applicant No.1-employer. However, on 28.1.2014 when none appeared on behalf of non-applicant No.1, the Commissioner has closed the employer's right to lead evidence and fixed the case for orders.
16. Issuance of notice as provided under Section 4A (3) (b) of the Act of 1923 to be mandatory is only to bring it to the knowledge of the employer that the penalty is to be imposed, so that the employer may submit explanation and evidence for the delay occurred in depositing amount of compensation and satisfy the Commissioner on the said issue. In the case at hand, earlier appeal was filed by appellant challenging the order of award of penalty by the Commissioner on the ground of non-issuance of show-cause notice as envisaged under Section 4A(3)(b) of the Act of 1923, which was allowed and the case was remitted back to the Commissioner. Appellant was well aware as to why the case has been remanded back to the Commissioner and also about the proceeding drawn by the Commissioner, but even then appellant has not submitted any explanation nor produced any evidence in this regard. Submission made by

learned counsel for appellant that specific notice was not issued to appellant using terminology 'as to why penalty to the extent of 50% be not imposed upon him' does not appeal to us because issuance of specific notice in the given facts of the case is not at all required. When once the case is remitted back to the Commissioner for limited purpose of considering award of penalty; the appellant appeared before the Commissioner and participated in the proceeding but failed to submit any explanation or bring on record any evidence on issue, then he cannot be permitted to again raise the same ground that specific notice in terms of Section 4A (3) (b) of the Act of 1923 has not been issued.

17. The Commissioner passed the order of penalty upon considering the facts brought on record by the parties. The order of penalty passed by Commissioner after considering explanation, if any, offered by employer, then that is only a factual finding and it does not involve any question of law. Appeal under Section 30 of the Act of 1923 is to be entertained only on a question of law, much less a substantial question of law, which is lacking in this appeal. Since no question of law is involved in this appeal, the appeal lacks merit and is liable to be dismissed.

18. Consequently, the appeal stands dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-