IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.45 OF 2022

Mr.Shivaji Kundlik Chunchekar,
Age : major, occupation builder, r/o
Shivshakti Building, plot No.714,
Akurdi Road No.2, MHADA,
Kandivli C, Mumbai-400101 and
Nava "T" Point Sindkhedraja, taluka
Sindkhedraja, district Buldana. ….. **Appellant.**

:: V E R S U S ::

1. Pranita Pradeep Sawant,
Age 47 years, occupation household.

2. Pradeep Dhondi Sawant,
Age 52 years, occupation : labour.

3. Pankaj Pradeep Sawant,
Age 22 years, occupation : labour.

All r/o Shiv Garjana Chawl,
Committee, Satara Camp,
Damu Nagar, Akurdi Road
No.10, Kandivli (E), Mumbai-400101. ….. **Respondents**.

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Shri A.J.Thakkar, Counsel for the Appellant.
Shri Raju Kadu, Counsel for Respondents.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 08/02/2023
PRONOUNCED ON : 06/04/2023

JUDGMENT

1. By this appeal, the appellant (employer) challenges judgment and award dated 16.11.2021 passed by learned Commissioner for Employees' Compensation and

Judge, Labour Court, Buldana (the trial Judge) in Application (ECA) (B) No.5/2019 whereby the trial Judge directed the employer to pay compensation of Rs.16,49,625/- along with interest at the rate of 12% per annum and 50% penalty amount Rs.8,24,813/-.

2. Brief facts necessary for the disposal of the appeal are as under:

The respondent Nos.1 and 2 are parents and respondent No.3 is younger brother of Pratik (the deceased) (the respondents hereinafter are referred as "the claimants"). As per the contentions of the claimants, the deceased was driver and was serving with the employer on his vehicle and was getting monthly salary of Rs.15,000/- per month and daily Bhatta of Rs.100/-. The deceased was maintaining his family. In the intervening night of 31.7.2018 and 1.8.2018, the deceased met with an accident adjacent to the locality of Mehkar Road at Sindkhedraja and died on the spot. Accordingly, on 1.8.2018, the offence was registered against an unknown vehicle. At the relevant time, the deceased was riding motorcycle of the employer bearing registration No.MH-

28/AM/7564. As per the contention of the claimants, the deceased, aged about twenty-two-year-old, was unmarried and serving with the employer to drive his vehicle. As a part of his duty, he went along with the employer. During intervening night of 31.7.2018 and 1.8.2018, when the deceased was in the employment of the employer, he met with an accident and died on the spot. As the said accident took place in the course and during the course of employment, the employer is liable to pay compensation. The claimants issued a Notice dated 25.2.2019 to the employer to pay compensation towards the death of the deceased. The said Notice was replied by the employer and he denied that the deceased was his employee and, therefore, the claimants preferred the application for grant of compensation under the provisions of the Employees' Compensation Act.

3. In response to the Notice, the employer filed written statement and denied the contentions of the claimants vide Exhibit-5. To substantiate the contentions, claimant Pradeep Dhondi Sawant adduced his evidence vide Exhibit-6. He reiterated the contentions that his son met with an accident during the course and in the course of employment.

Besides his oral evidence, he placed reliance on the spot panchanama, accident report, postmortem report etc.. He also filed on record Notice dated 25.2.2019 and Notice reply dated 2.3.2019.

4. The employer has also filed affidavit of evidence vide Exhibit-6. However, he remained absent for cross-examination. After sufficient opportunity, learned trial Judge heard the submissions of both the sides and awarded the compensation to the claimants of Rs.16,49,625/- along with interest at the rate of 12% per annum and 50% penalty amount Rs.8,24,813/-.

5. Being aggrieved and dissatisfied with the judgment, the present appeal is preferred mainly on the ground that after filing of the affidavit in evidence, the next date 6.3.2020 was fixed. However, it was adjourned. Thereafter, lock-down was declared due to Covid-19 pandemic situation. In view of Standard Operating Procedure (SOP), learned trial Judge has not proceeded with the matter till 30.6.2021. In view of the new SOP, learned trial Judge was pleased to fix the case for further evidence of the employer on

12.7.2021. However, the youngest son of the employer, aged about nineteen years, was under treatment in Kokilaben Dhirubhai Ambani Hospital at Mumbai as he was suffering from acute gall bladder inflammation from 22.7.2021. Prior to that, the mother of the appellant was expired on 30.7.2020 and he was required to perform the last rites and, therefore, he could not remain present before the Court below. The employer was required to attend the medical issues of his son throughout the period from 16.7.2021 to 9.11.2021. Due to the serious illness of his son and the death of his mother, the employer was not in a proper mental state of mind and, therefore, he could not appear before learned trial Judge and, therefore, learned trial Judge proceeded and passed the award against him. As per contentions of the employer, there are sufficient and reasonable causes for his non-appearance. He is saddled with the responsibility to pay the compensation without hearing him and without any opportunity to rebut the evidence of the claimants. Therefore, he preferred this appeal to set aside the impugned judgment and award and to remand the case back to learned trial Judge for its disposal.

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6. Heard learned counsel Shri A.J.Thakkar for the appellant/employer and learned counsel Shri Raju Kadu for the respondents/claimants.

7. Learned counsel Shri A.J.Thakkar for the employer submitted that by the notice reply, the employer has denied the fact that the deceased was his employee and the accident of the deceased was caused during the course and in the course of employment. The claimants adduced the evidence to substantiate the contentions. However, the employer could not get an opportunity to rebut the evidence as his son was seriously ill and was under the treatment in Kokilaben Dhirubhai Ambani Hospital at Mumbai and, therefore, an opportunity is to be granted to the employer. He further submitted that the contention of the employer is supported by the medical papers which show that initially on 30.7.2020 the employer has lost his mother and, thereafter, on 16.7.2021 his son was admitted in the hospital at Mumbai. The medical papers show that the son of the employer was admitted in the hospital as he was suffering from acute gall bladder inflammation and was discharged from the hospital on 9.11.2021. Meantime, dates were fixed by learned trial

Judge and the application was decided on 13.11.2021. He further submitted that in view of Section 4A of the Employees' Compensation Act, before imposing the penalty, the opportunity of show cause is to be given to the employer which is not given by learned trial Judge prior to imposing of the penalty and prayed for remand of the matter back.

8. *Per contra*, learned counsel Shri Raju Kadu for the claimants submitted that after sufficient opportunity, the employer has not adduced the evidence and hence learned trial Judge closed the evidence and after hearing both the sides, directed the employer to pay the compensation to the claimants. Hence, no interference is called for.

9. I have heard both the sides and perused the record with able assistance of learned counsel for both the parties.

10. At the time of hearing of the appeal, substantial question of law was not framed and, therefore, I frame the same as follows:

Whether the case is made out by the employer to remand the matter back as sufficient opportunity was not granted to him to adduce the evidence?

Whether the order imposing the penalty without issuing show cause notice is bad in law and, therefore, the same is liable to be set aside.

11. There is no dispute that the claimants have filed the application for grant of compensation on an allegation that their son, the deceased, was in the employment of the employer and in the intervening night of 31.7.2018 and 1.8.2018 he met with an accident in the course and during the course of the employment. Before filing of the application, they have issued the notice and claimed the compensation. The said notice was replied by the employer and denied the employee and employer relationship. As per the contention of the employer, the deceased was the classmate of his son and, therefore, the deceased had been at his village. During the intervening night, the deceased has taken his motorcycle without his consent and met with an accident and, therefore, he is not liable to pay the compensation. During the cross examination of claimant Pradeep Dhondi Sawant, defence was put to him to the effect

that the deceased was not the employee of the employer. Claimant Pradip Dhondi Sawant, the father of the deceased, admitted during the cross-examination that he has no evidence to show that his son was in the employment of the employer. He further admitted that he has not filed on record the driving licence of his son. On the basis of this cross-examination, the employer claimed that the deceased was not his employee. To rebut the evidence of the claimant, he has also filed an affidavit, but he could not remain present for the cross-examination. The Roznama of the trial court maintained in the application shows that the affidavit was filed on 17.2.2020. Thereafter, due to the Covid-2019 Pandemic situation there was no progress in the matter. On 30.6.2021, the absence of both the parties was recorded and opportunity was granted to the employer to remain present. But the employer failed to remain present till 13.10.2021 and, therefore, the matter was fixed for argument and decided on 16.11.2021. As per the the contention of the employer, during Covid-2019 Pandemic his mother died on 30.7.2020 and, thereafter, his son was suffering from acute gall bladder inflammation and was admitted in the hospital at Mumbai. He

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has produced on record the medical treatment papers issued by “WINS, a Dedicated Hospital for Neurological Diseases”. Again, his son was admitted in Kokilaben Dhirubhai Ambani Hospital at Mumbai on 22.7.2021 and was under treatment till 10.8.2021. It is further apparent that his son was under treatment till 9.11.2021. Thus, the ground raised by the employer that due to ailment of his son he could not remain present before learned trial Judge is supported by the medical evidence.

12. While awarding the compensation, learned trial Judge further directed to pay penalty of Rs.8,24,813/-. Learned counsel Shri A.J.Thakkar for the employer submitted that before imposing penalty, learned trial Judge ought to have issued the show cause notice which is not issued and sufficient opportunity is not granted to show cause. Hence, on that ground also the matter needs to be remanded back to learned trial Judge.

13. In order to deal with submissions made by learned counsel for appellants, it is necessary to reproduce provisions of Section 4A of the said Act, which read as under:—

"4-A. Compensation to be paid when due and penalty for default.—

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the (employee), as the case may be, without prejudice to the right of the (employee) to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon, pay a further sum not exceeding fifty percent of such amount by way of penalty:

> Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.
>
> Explanation.- For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).
>
> (3A) The interest and penalty payable under sub-section (3) shall be paid to the (employee) or his dependent, as the case may be.]"

14. The first question, in this context, which arises is regarding the day/date on which, the compensation under sub-section (1) of Section 4-A of the said Act "falls due". The second question, which arises is the day/date on which the interest under clause (a) of sub-section (3) of section 4-A of the said Act would start running on the amount which fell due.

15. Section 3 of the said Act deals with the employers liability for compensation. Sub-section (1) of Section 3 of the said Act states that if personal injury is caused to a workman by an accident arising out of and in the course of his employment, his employer shall be liable to pay the compensation in accordance with this chapter. What is the

amount of compensation, which is required to be paid by the employer to the workman under sub-section (1) of section 3, is specified under Section 4. Section 4-A of the said Act deals with the compensation to be paid when due and the penalty for default. Sub-section (1) of section 4-A states that the compensation shall be paid as soon as it "falls due". Sub-section (3) of section 4-A states that where any employer is in default in paying the compensation under this Act, within one month from the date it "fell due", the Commissioner can direct in terms of clause (a) that the employer shall, in addition to the amount of arrears, pay simple interest thereon, at the rate of 12 per cent per annum. Clause (b) further empowers the Commissioner to direct the employer to pay, in addition, a further sum not exceeding 50 per cent of such an amount by way of penalty, if, in his opinion, there is no justification for delay in payment of arrears and interest. However, the only rider on imposition of penalty under clause (b) is that the employer has to be given a reasonable opportunity to show cause why the order imposing the penalty should not be passed.

16. Section 4A of the said Act being a mandatory in character, it has to be followed strictly. The said Act is beneficial provision. When construing the beneficial provisions, such Statute has to be construed giving the widest scope to ameliorative and beneficial provision intended by the Legislature. Section 4-A as stated above is mandatory and whenever the compensation was due i.e. as soon as the notice of accident is given under Section 10, within one month from the date, but it is due from date of accident, the compensation has to be paid when it falls due as provided under Section 4A of the Act.

17. Here, in the present case, admittedly, no notice was given to the employer before imposing the penalty. There is no evidence on record to show that learned trial Judge has issued any notice before imposing the penalty.

18. Learned counsel Shri A.J.Thakkar for the employer submitted that the penalty should not have been imposed without issuing show cause notice. He made a reference of Section 4A of the said Act. Careful reading of the said Section, it is clear that the provision is made in order to

ensure that the workman to whatever the employee prepared to pay immediately pending the decision. The provision is mandatory in character which is to be followed strictly.

19. The Honourable Apex Court in the case of **Ved Prakash Garg vs. Premi Devi and ors**, reported in **(1997) 8 SCC 1** has held that sub-section (2) of Section 4-A contemplates a situation wherein the employer though accepting his liability to pay compensation to his injured workman disputes the extent of the claim of compensation and in such a case sub-section (2) enjoins him to make provisional payment based on the extent of accepted liability by depositing it with the Commissioner or to pay it directly to the workman. It has observed that it is obvious that such an obligation of the employer would not arise under Section 4-A sub-section (2) if he totally disputes his liability to pay on grounds like the injured person being not his employee or that the accident was caused to him at a time when he was not in the course of employment or that the accident caused to him did not arise out of his employment. If such disputes are raised by the employer then his obligation to make provisional payment under sub-section (2) of Section 4-A would not arise

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and his liability would depend upon the final adjudication by the Workmen's Commissioner at the end of the trial. It is further held 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 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 said Act.

20. In another judgment, the Honourable Apex Court in the case of **National Insurance Company Limited vs. Mubasir Ahmed**, reported in **[(2007)2 SCC 349** while considering question of payment under the said Act has held that the compensation becomes due only on the basis of the

adjudication of the claim and unless such adjudication is one, it was held that the question of compensation becoming due does not arise. It is further held that legislature has not used the expression "from the date of accident" but has used the expression “falls due”, and in the light of this, it was held that obviously the interest cannot be charged from the date of accident but it has to be charged from the date of adjudication by the Commissioner.

21. From the decisions of the Honourable Apex Court cited *supra*, this Court in the case of **Udhav Rangnathrao Pawar v. Sheshrao Ramji Jogdand and anr** cited *supra* has laid down following principles:

> (a) Employer's liability to pay compensation arises under Section 3(1) of the said Act as soon as the personal injury is caused to a workman by an accident which arises out of and in the course of employment (Pratap Narain's case).
>
> b) Where the question arises in any proceedings under the Act as to the liability of any person to pay the compensation or as to the amount or the duration of the compensation, it has to be settled by the Commissioner, in default of the agreement.

However, there is nothing to justify the arguments that the employer's liability to pay the compensation under Section 3(1) of the said Act in respect of the injury gets suspended or deferred until after the settlement by the Commissioner under Section 19 of the said Act (Pratap Narain's case).

(c) In case, where the employer accepts his liability to pay the compensation, but disputes the extent of the claim, sub-section (2) of Section 4-A requires him to make provisional payment based on the extent of accepted liability by depositing it with the Commissioner or paying directly to the workman injured (Ved Prakesh's case).

(d) Where the employer totally denies his liability to pay the compensation and does not accept it, then his liability to make provisional payment under sub- section (2) of Section 4-A of the said Act would not arise and his liability to pay the compensation would depend upon the final adjudication by the Commissioner under Section 19 of the said Act (Ved Prakesh's case).

(e) Once the compensation due under the Act becomes ascertained, either provisionally under sub- section (2) of Section 4-A or finally on the adjudication by the Commissioner under Section 19, the same would "fall due" immediately after expiry of one month from the date of adjudication under Section 19 of the said Act (Ved Prakash's case).

(f) In Mubasir's case, it was held that since no indication is there as to when the compensation becomes due, it has to be taken to be the date of adjudication of the claim, as it becomes due on the basis of such adjudication of claim and unless the adjudication is done the question of compensation becoming due does not arise. It has been held that significantly the legislature has not used the expression, "from the date of accident", but has used the expression, "falls due" under sub-section (1) of Section 4-A.

(g) So far as the payment of interest under clause (a) of sub-section (3) of Section 4-A of the said Act is concerned, it has been held in Ved Prakash's case that in either case, where the employer does not accept his liability as a whole or where he disputes the extent of the claim, the Commissioner would be justified in directing payment of interest from the date of accident concerned and such order would perfectly be justified on the scheme of Section 4-A(3)(a) of the said Act.

(h) In Ved Prakash's case it has been held that once the compensation "falls due" and within one month, it is not paid by the employer, then as per Section 4-A(3)(a), interest at the permissible rate gets added to the said principal amount of the compensation

> as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose bread winner might have either been seriously injured or lost his life. The interest is almost automatic, once the default is committed and there is no element of penalty involved in it. The principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the injured to be discharged under the Compensation Act and not divorce it.
>
> (i) So far as the payment of interest under Section 4-A(3) is concerned, it was held in Mubasir's case that the High Court was wrong in granting interest at the rate of 12% per annum from the date of accident. It was held that the interest at the rate of 12% per annum was payable from the date of completion of one month from the date of adjudication of the claim for compensation by the Commissioner, as according to it, the compensation "falls due" under Section 4-A(1) on the date of adjudication (Mubasir's case).

22. In Mohd. Nasir's case, it was held that the interest under Section 4-A(3) of the said Act would be from the date of default and not from the date of award of compensation. It was held that the provision of interest, as it appears from a

plain reading is penal in nature. It was also held that the interest will also be payable at the rate of 7.5% per annum from the date of filing of the application till the date of award and thereafter, it shall be as per the rate of interest determined by the Commissioner as per his order under Section 19 of the said Act. The Honourable Apex Court in the case of **Ved Prakash Garg vs. Premi Devi and ors**, reported in **(1997) 8 SCC 1** has held that sub-section (2) of Section 4-A contemplates a situation wherein the employer though accepting his liability to pay compensation to his injured workman disputes the extent of the claim of compensation and in such a case sub-section (2) enjoins him to make provisional payment based on the extent of accepted liability by depositing it with the Commissioner or to pay it directly to the workman. It has observed that it is obvious that such an obligation of the employer would not arise under Section 4-A sub-section (2) if he totally disputes his liability to pay on grounds like the injured person being not his employee or that the accident was caused to him at a time when he was not in the course of employment or that the accident caused to him did not arise out of his employment. If such disputes are raised by the employer then his obligation to make provisional payment under sub-section (2) of Section 4-A would not arise and his liability would depend upon the final adjudication by the Workmen's Commissioner at the end of the trial. It is further held 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 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 said Act.

23. In another judgment, the Honourable Apex Court in the case of **National Insurance Company Limited vs. Mubasir Ahmed**, reported in **[(2007)2 SCC 349** while

considering question of payment under the said Act has held that the compensation becomes due only on the basis of the adjudication of the claim and unless such adjudication is done, it was held that the question of compensation becoming due does not arise. It is further held that legislature has not used the expression "from the date of accident" but has used the expression “falls due”, and in the light of this, it was held that obviously the interest cannot be charged from the date of accident but it has to be charged from the date of adjudication by the Commissioner.

24. From the decisions of the Honourable Apex Court cited *supra*, this Court in the case of **Udhav Rangnathrao Pawar v. Sheshrao Ramji Jogdand and anr** cited *supra* has laid down following principles:

> (a) Employer's liability to pay compensation arises under Section 3(1) of the said Act as soon as the personal injury is caused to a workman by an accident which arises out of and in the course of employment (Pratap Narain's case).
>
> b) Where the question arises in any proceedings under the Act as to the liability of any person to pay the compensation or as to

the amount or the duration of the compensation, it has to be settled by the Commissioner, in default of the agreement. However, there is nothing to justify the arguments that the employer's liability to pay the compensation under Section 3(1) of the said Act in respect of the injury gets suspended or deferred until after the settlement by the Commissioner under Section 19 of the said Act (Pratap Narain's case).

(c) In case, where the employer accepts his liability to pay the compensation, but disputes the extent of the claim, sub-section (2) of Section 4-A requires him to make provisional payment based on the extent of accepted liability by depositing it with the Commissioner or paying directly to the workman injured (Ved Prakesh's case).

(d) Where the employer totally denies his liability to pay the compensation and does not accept it, then his liability to make provisional payment under sub- section (2) of Section 4-A of the said Act would not arise and his liability to pay the compensation would depend upon the final adjudication by the Commissioner under Section 19 of the said Act (Ved Prakesh's case).

(e) Once the compensation due under the Act becomes ascertained, either provisionally under sub- section (2) of Section 4-A or finally on the adjudication by the

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Commissioner under Section 19, the same would "fall due" immediately after expiry of one month from the date of adjudication under Section 19 of the said Act (Ved Prakash's case).

(f) In Mubasir's case, it was held that since no indication is there as to when the compensation becomes due, it has to be taken to be the date of adjudication of the claim, as it becomes due on the basis of such adjudication of claim and unless the adjudication is done the question of compensation becoming due does not arise. It has been held that significantly the legislature has not used the expression, "from the date of accident", but has used the expression, "falls due" under sub-section (1) of Section 4-A.

(g) So far as the payment of interest under clause (a) of sub-section (3) of Section 4-A of the said Act is concerned, it has been held in Ved Prakash's case that in either case, where the employer does not accept his liability as a whole or where he disputes the extent of the claim, the Commissioner would be justified in directing payment of interest from the date of accident concerned and such order would perfectly be justified on the scheme of Section 4-A(3)(a) of the said Act.

(h) In Ved Prakash's case it has been held that once the compensation "falls due" and within one month, it is not paid by the employer, then as per Section 4-A(3)(a), interest at the permissible rate gets added to the said principal amount of the compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose bread winner might have either been seriously injured or lost his life. The interest is almost automatic, once the default is committed and there is no element of penalty involved in it. The principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the injured to be discharged under the Compensation Act and not divorce it.

(i) So far as the payment of interest under Section 4-A(3) is concerned, it was held in Mubasir's case that the High Court was wrong in granting interest at the rate of 12% per annum from the date of accident. It was held that the interest at the rate of 12% per annum was payable from the date of completion of one month from the date of adjudication of the claim for compensation by the Commissioner, as according to it, the compensation "falls due" under Section 4-A(1) on the date of adjudication (Mubasir's case).

25. In Mohd. Nasir's case, it was held that the interest under Section 4-A(3) of the said Act would be from the date of default and not from the date of award of compensation. It

was held that the provision of interest, as it appears from a plain reading is penal in nature. It was also held that the interest will also be payable at the rate of 7.5% per annum from the date of filing of the application till the date of award and thereafter, it shall be as per the rate of interest determined by the Commissioner as per his order under Section 19 of the said Act.

26. Thus, in view of the provisions under sub clause (b) of sub Section (3) of Section 4A of the said Act, show cause notice is required to be issued to the employer calling upon to furnish explanation for the delay caused in making the payment of arrears. The penalty is required to be levied under the said provisions after issuing show cause notice to the employer concern who will have reasonable opportunity to show cause why, on account of some justification on his part for the delay in payment of compensation amount, he is not liable for this penalty.

27. The show cause notice contemplated by clause (b) of sub section (3) of Section 4A of the said Act is with reference to the arrears of amount of compensation

determined to be payable by the employer along with the interest thereon.

28. In view of the decisions cited *supra* and in view of the fact that the employer could not adduce his evidence, due to the inability on account of ailment of his son, opportunity is to be granted to the employer to adduce evidence in support of his defence.

29. It is well settled that the power of remand not to be used casually, but it is to be used sparingly. However, in view of the above circumstances, this is a fit case to be remanded back to learned trial Judge to decide it after recording the evidence of the employer and after issuing him show cause notice in view of clause (b) of sub section (3) of Section 4A o the said Act.

30. In this view of the matter, I pass following order:

ORDER

(1) The First Appeal is **allowed**.

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(2) The judgment and award dated 16.11.2021 passed by learned Commissioner for Employees’ Compensation and Judge, Labour Court, Buldana in Application (ECA) (B) No.5/2019 is quashed and set aside.

(3) The record and proceedings in Application (ECA) (B) No.5/2019 are remitted back to learned Commissioner for Employees’ Compensation and Judge, Labour Court, Buldana.

(4) Learned trial Judge shall record evidence of the appellant/ employer and shall give opportunity to adduce additional evidence if he prefers to adduce the same.

(5) The appellant/employer and the claimants are directed to appear before learned trial Judge on 18.4.2023.

(6) Learned trial Judge shall decide the application on its own merits after recording the evidence of the appellant/employer.

With this, the First Appeal stands disposed.

(URMILA JOSHI-PHALKE, J.)