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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3257 OF 2018

The Chairman,
Sidheshwar Sahakari Sakhar Karkhana Ltd.,
Uttar Solapur,
District - Solapur

APPELLANT

VERSUS

1. Sunita w/o Sakharam Wahule
Age - 35 years, Occ - Household
R/o Khadgaon, At Present Sakhala Plot
Parbhani, Taluka & District - Parbhani
2. Ashroba s/o Sakharam Wahule
Age - 18 years, Occ - Education
3. Seema d/o Sakharam Wahule
Age - 17 years, Occ - Education
4. Balaji s/o Sakharam Wahule
Age - 16 years, Occ - Education

RESPONDENTS

Respondents No.2 to 4 are the children
of respondent No.1 and R/o as above
of Respondent No.1

5. Dinesh s/o Murlidhar Jadhav
6. The Oriental Insurance Company Ltd.,
Through its Branch Manager, Parbhani
Taluka & District - Parbhani

DELETED

.....
Mr. Aditya N. Sikchi, Advocate for the appellant
Mr. P. B. Rakhunde h/f Mr. S. B. Bhapkar, Advocate for
respondents No.1 to 4
Mr. M. K. Goyanka, Advocate for respondent No.6
Respondent No.5 is deleted
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 31st JULY, 2024

JUDGMENT :

1. This first appeal, filed under section 30 of the Employee's Compensation Act, takes exception to Judgment and Award dated 8th January, 2016 passed by learned *ex-officio* Commissioner for Employee's Compensation, Parbhani in W.C.F.A. No. 5 of 2012, to the extent it directs the appellant to pay penalty amount of Rs.1,84,170/-.
2. The only point arises for consideration in this First Appeal is that, whether the Commissioner for Workmen's Compensation was justified in issuing direction to the employer / appellant herein to pay penalty amount to the extent of 50% of the amount of compensation, without issuing notice under section 4-A (3) (b) of the Workmen's Compensation Act.
3. Undisputed facts are that, claim filed by respondents No.1 to 4, / original claimants for Compensation on account of death of Sakharam Munjaji Wahule, was allowed by the Commissioner, thereby directing the appellant and respondent No. 6 herein, to jointly and severally pay compensation of Rs.3,68,340/- along with interest @ 12% p.a. and directed the appellant to pay 50% amount of compensation i.e. Rs.1,84,170/- by way of penalty.
4. Admittedly, though served, appellant remained absent

before the learned Commissioner.

5. Heard learned advocate for appellant, learned advocate for respondents No.1 to 4 – claimants and learned advocate for respondent No.6.

6. Learned advocate for appellant relied on the following judgments :

- a. *“Ved Prakash Garg V/s Premi Devi and Others” (1997) 8 SCC 1*
- b. *“Oriental Insurance Company Limited V/s Siby George and Others” (2012) 12 SCC 540*
- c. *“Sarjerao Unkar Jadhav V/s Gurindar Singh and Others” 1990 Mh.L.J. 790*
- d. *“Chief Executive Officer and Others V/s Suraiyya Rafik Khalifa and Others” MANU/MH/2890/2023*
- e. *Unreported judgment of this Court in First Appeal No. 1592 of 2011 “Kinetic Engineering Ltd V/s K. P.Ramdas Nair”*

7. The ratio in above judgments is that before imposing penalty on the employer, the Commissioner has to issue notice under section 4-A (3) (b) of the Workmen’s Compensation Act, thereby giving reasonable opportunity to the employer to show cause that there was justifiable reason for the delay on the part

of the insured employer to pay the compensation.

8. Learned advocate for the appellant is justified in relying on the above judgments to challenge the penalty imposed on the appellant, on the ground that the learned Commissioner failed to issue notice under section 4-A (3) (b) of the Workmen's Compensation Act, before imposing penalty on the appellant.

9. The Apex Court in **"Ved Prakash Garg"** (*supra*), has held that-

"..... 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."

10. This Court in **"Uddhav Rangnathrao Pawar V/s Sheshrao Raji Jogdand and Another"** 2009 (6) ALL MR 117, has followed the decision in **"Ved Prakash"** (*supra*) and held that:

1. "32. This judgment in Ved Prakash's case has been followed in un-reported judgment of this Court in F. A. No. 1562/2009, Nandi Shankar Sakhar Karkhan's case (*supra*). It has been held that a show cause notice was required to be issued to the employer calling upon him to furnish the explanation for the delay caused in making the payment of arrears. Upon receipt of the explanation from the employer, if the Commissioner is not satisfied then the

penalty to the extent of maximum 50 per cent of the amount of compensation determined is required to be paid by the employer. The order impugned in the present case is a composite order determining the compensation payable by the employer imposing the interest on the arrears of the amount of compensation and imposing penalty for failure to furnish the satisfactory explanation. The show cause notice contemplated by section (b) of section 3 of section 4-A of the Act is with reference to the arrears of the amount of compensation determined to be payable by the employer along with the interest payable thereon. This finding would arise only upon determination of the compensation by the Commissioner under section 19 of the said Act. Hence, the show cause notice contemplated is after passing the order by the Commissioner determining compensation.”

11. These decisions are followed by this Court in First Appeal No. 1592 of 2011 holding that -

“8. It is not disputed in the instant matter, that the Commissioner for Workmen’s Compensation did not call upon the employer to show cause as to why the amount of penalty shall not be recovered from him thereby depriving the employer to putforth his submissions as regards circumstances compelling the employer in respect of his failure to pay the compensation within stipulated period. Therefore, the order passed by the Commissioner for Workmen’s Compensation, to the extent specified above, needs to be quashed and set aside.

9. The appeal thus deserves to be allowed and the matter requires to be remitted back to the Commissioner for Workmen’s Compensation with a direction to extend an opportunity to the employer to show cause as to why the amount of penalty shall not be recovered from him and after extending an opportunity of hearing to

the appellant – employer, the Commissioner shall proceed to decide the issue as regards imposition of penalty as contemplated by Section 4-A of the Workmen’s Compensation Act.”

12. Case in hand is squarely covered by the aforestated ratio and observations, as admittedly the Commissioner has failed to issue notice under section 4-A (3) (b) of the Workmen’s Compensation Act to the appellant before imposing penalty. Hence, the appeal deserves to be allowed and the same is hereby allowed. The direction issued by the Commissioner for Workmen’s Compensation, Parbhani in clause (3) of the Judgment and Award dated 8th January, 2016 passed in W.C.F.A. No. 5 of 2012 is set aside and the learned Commissioner is directed to extend an opportunity of hearing to the appellant to show cause in respect of the proposed order of recovery of penalty, as contemplated under section 4-A (3) (b) of the Workmen’s Compensation Act.

13. Parties are directed to appear before the learned Commissioner on 26th August, 2024 and as such, no separate notice is required for their appearance before the learned Commissioner.

14. Workmen’s Compensation Commissioner shall decide the matter within a period of three months from the date of receipt

of writ of this order.

15. In view of disposal of the First Appeal, Civil Application No. 6764 of 2024 is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

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