

**(1988) 01 BOM CK 0012**  
**In the Bombay High Court**

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|-----------------------------------|----|------------|
| Gannon Dunkerly and Company       | Vs | APPELLANT  |
| Smt. Aleyamma Varghese and Others |    | RESPONDENT |

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**Date of Decision :** 11-01-1988

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 3(4)

**Citation :** (1988) 1 ACC 426 : (1988) ACJ 979

**Hon'ble Judges :** B.G. Deo, J

**Bench :** Single Bench

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**Judgement**

B.G. Deo, J.—I have heard Shri Gokhale learned Counsel for the applicant and Shri Pilley learned Counsel for the respondents.

2. Question relates to penalty. A workman of the appellant died on the site at Koradi. The Commissioner under the Workmen's Compensation Act at Nagpur fixed the liability at Rs. 19,200/- as compensation and directed the appellant to pay the same with Rs. 9,600 as penalty within a month of passing of the impugned order. The amount of Rs. 19,200/- was also directed to carry simple interest at the rate of 6 per cent per annum from the month of April, 1978.

3. Shri Gokhale learned Counsel for the appellant contended that the penalty should not have been imposed as there was no default on the part of the company for the simple reason that the Company was not at all noticed. According to the learned Counsel for the appellant the Company was not working at the site at the relevant time and the notice was served on the care-taker of the Company who was at the site. All the same the Company filed a written-statement before the Commissioner and thereafter did not take part in the proceedings, which has now resulted in payment of compensation with penalty. Paragraph 11 of the impugned Judgment is pertinent to be quoted in this context:

Here is a case where the non-applicant No. 1 has given scant dis-respect to the law. Even though a workman employed by the non-applicant No. 1 dies while performing the duties under the non-applicant No. 1, yet, no attempt has been

made by the non-applicant No. 1 to pay the compensation to the mother the dependent. The scant dis-respect to the law came to the fore-front when even after the demand was made under Ex. 25, the non-applicant No. 1 paid no attention to it nor has paid the amount of the compensation, so much so, the Company has failed to deposit the amount of compensation with us I feel when the liability to pay the compensation accrued under Sections 3 and 4 of the Workmen's Compensation Act not to deposit the amount in the Court and failure to pay the amount of compensation to the dependent attracts the provisions of Section 4-A (3) of the Workmen's Compensation Act. No grounds have been made out by the non-applicant No. 1 under which the compensation has not been either deposited with us nor has been paid to the claimant. In view of this, I feel, this is a fit case in which this Commissioner should exercise powers for levying a penalty as well as ordering the payment of interests.

Under Clause 4A(3) of the Workmen's Compensation Act, 1932, 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 may direct that in addition to the amount of arrears, simple interest at the rate of six per cent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty.

4. Having regard to the entire facts and circumstances of the case and also the fact that since the year 1980 an unfortunate woman who lost the son while on work in the employment of the appellant company has been deprived of the due compensation with penalty, (the appeal was also delayed inordinately) interest of justice would be well served if the amount is directed to be paid to the mother without any further delay. As it is the conduct of the appellant shows that the penalty has been imposed on the appellant with due consideration and having due regard to the provisions of the law by the Commissioner.

5. Learned Counsel for the appellant also contended that u/s 4A(2), the employer had not accepted any liability for compensation and as such there was no question of his making any provisional payment, that stage was long passed even though the employer had denied the entire liability by way of written statement. The compensation has been awarded to the respondent-claimant and in view of failure of the payment of compensation the penalty has been imposed. The failure was there as soon as the death occurred as under the law the Company was liable to pay compensation even if the mother had not taken any recourse to the law. The delay for payment of compensation is writ large in the facts and circumstances of the case and as such the penalty awarded by the Commissioner cannot be waived.

6. In result the appeal is hereby dismissed. The amount deposited with the Commissioner shall be paid to the claimant-respondent without any farther delay. No order as to costs.