

(2023) 03 BOM CK 0024
In the Bombay High Court
Case No : First Appeal No.352 Of 2007

Gowardhan Madanlal Agrawal And Others	APPELLANT
Vs	
Ramkumar Alias Munnilal Prajapati And Others	RESPONDENT

Date of Decision : 09-03-2023

Acts Referred:

Employees? Compensation Act, 1923 — Section 3, 3(1), 4, 4A, 4A(1), 4A(2), 4A(3), 4A(3)(a), 4A(3)(b), 10, 19

Citation : (2023) 03 BOM CK 0024

Hon'ble Judges : Urmila Joshi-Phalke, J

Bench : Single Bench

Advocate : N.B.Kalwaghe

Final Decision : Partly Allowed

Judgement

Urmila Joshi-Phalke, J

1. This appeal is filed by original respondent Nos.1 and 4, who are owners of shop complex and residential flats, situated at Jaisthambha Chowk, Paratwada, challenging judgment and award dated 3.10.2006 passed by learned Commissioner for Workmen's Compensation at Amravati in Application (WCA) No.11/2002 whereby learned Commissioner directed appellants/owners to pay compensation Rs.3,02,400/- jointly and severally also to pay amount Rs.1,51,200/- towards 50% penalty on the amount of the compensation and interest @ 12% per annum from 28. 10.2001, till the compensation amount is realized.

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

Respondent Nos.1 to 3 are dependents of deceased Jagannath Munnilal Prajapati. Appellant No.1 is husband of appellant No.2. Appellant No.2 had decided to build up a big shopping_cum_residential complex at the plot owned by appellant No.2

which was situated at Jaisthambha Chowk, Paratwada. Appellant No.1, being husband of appellant No.2, was having natural predominance over the construction work which was to be carried out in constructing of shopping_cum_residential complex. The appellants engaged respondent No.4 as Engineer to keep supervision over the construction work so also engaged respondent No.5 to be Contractor for executing construction work. The appellants also engaged labourers including deceased Jagannath Munnilal Prajapati for executing the construction work in the control and supervision of respondent Nos.4 and

5. Deceased was working in the control and supervision of respondent Nos.4 and 5 as labour on daily wages @ Rs.90/-per day and monthly he was drawing salary Rs.2700/- per month.

3. On 28.3.2001, the deceased was working on third floor of the undergoing construction of the shopping complex. He fell down from the third floor of the shopping complex and died. When the deceased fell down from the third floor of the shopping complex, labourers namely Hiralal Saket, Rambahar Prajapati, Pannalal Saket, and others were doing the work along with the deceased. On receipt of information, appellant No.2 rushed to the accident place and shifted Jagannath for treatment at Cottage Hospital, Achalpur and, thereafter, to General Hospital at Amravati. After examination, Medical Officer declared him dead.

4. Respondent Nos.1 and 2 are parents of the deceased and respondent No.3 is minor brother of the deceased. At the time of the death, the deceased was aged about 20 years and he was having sound health. The accident of the deceased took place during course of employment and in the course of employment. After the accident, respondent Nos.1 to 3 approached to appellants for compensation. However, their demand and request for payment of compensation was not considered. In fact, appellants have not responded to the demand of compensation by claimants and, therefore, claimants were constrained to send Demand Notice dated 22.5.2002 to appellants as well as the Engineer and the Contractor. The Engineer refused to receive the notice. The said notice was not replied by any of them and, therefore, claimants were constrained to file an application under Section 4 of the Employees' Compensation Act, 1923 (for short, "the said Act") for grant of compensation. The claimants also claimed 50% penalty and interest @ 18% on the amount of compensation from the date of compensation fell due.

5. In response to the notice, appellants as well as respondent No.4 and respondent No.5 resisted the claim by filing written statement. Respondent No.4 filed his written statement vide Exhibit-12 and denied relationship between the deceased and him. It is contention of respondent No.4 that there was no contract between them and, therefore, he is not liable to pay compensation. Appellant No.1 also resisted the claim of claimants by filing written statement vide Exhibit-23 and denied contentions of claimants. As per contention of appellant No.1, the deceased was working with the Contractor i.e. respondent No.5 and there was no

contract between him and the deceased and, therefore, he is not liable to pay the compensation. Respondent No.5 has also resisted the claim by claimants and denied liability to pay compensation. Appellant No.2 also denied the liability to pay the compensation on the ground that the deceased was working with respondent Nos.4 and 5, the Engineer and the Contractor and, therefore, she is not liable to pay the compensation. As per contention of appellant No.2, respondent Nos.4 and 5 have engaged the deceased as a labour and, therefore, they are liable to pay compensation to claimants.

6. Learned Commissioner below framed necessary issues and after recording evidence, allowed the claim of claimants by holding that appellants are jointly and severally liable to pay compensation to claimants and the claim against respondent Nos.4 and 5 was rejected.

7. Being aggrieved and dissatisfied with the judgment and award impugned in the appeal, the present appeal is preferred by appellants on the ground that the judgment and award impugned is perverse and in violation of liability applicable. It is further contention of appellants that learned Commissioner below is not justified in taking recourse to provisions of Section 4-A of the said Act by imposing penalty without giving reasonable opportunity to appellants to show cause as to why such order of penalty should not be passed as contemplated under the said Section. The appellants have also challenged findings of learned Commissioner below that appellants are jointly and severally liable for payment of the compensation absolving respondent Nos.4 and 5 in spite of fact that respondent No.4 was Senior Engineer and respondent No.5 was Contractor. It is further submitted by appellants that there was no privity of contract between appellants and the deceased. The deceased was engaged by respondent Nos.4 and 5. However, learned Commissioner below erroneously held appellants liable to pay compensation and, therefore, the judgment and award impugned deserves to be quashed and set aside.

8. Heard learned counsel Shri N.B.Kalwaghe for appellants. None appeared for respondents. After sufficient opportunity, none appeared for respondents. On 24.1.2023, a last opportunity was afforded to respondent Nos.1 to 3. However, none appeared for them and hence the matter was proceeded. It is submitted by learned counsel for appellants that there was no privity of contract between appellants and the deceased. There is no evidence on record to show that the deceased was working as he was engaged by appellants to carry out the construction work. In fact, the construction work was given to Sadique and Company. Respondent No.4 was engaged by Sadique and Company to supervise the said construction work and respondent No.5 was Contractor. However, learned Commissioner below has not considered the same and erroneously saddled the liability to pay the compensation on appellants. There is no evidence on record to show that the deceased was engaged by appellants to carry out the work of construction. On the other hand, evidence on record shows that respondent No.4 was appointed by Sadique and Company to supervise the

construction work of appellants and respondent No.5 had engaged the deceased and, therefore, respondent Nos.4 and 5 are liable to pay the compensation and not appellants. Learned counsel for appellants further submitted that the penalty is imposed by learned Commissioner below without giving appellants an opportunity to show cause before passing any order of penalty and the interest. So far as challenge to imposition of penalty is concerned, it is the contention raised by learned counsel for appellants that no order imposing penalty could have been passed under clause (b) of sub-section (3) of Section 4-A of the said Act, without issuing a show cause notice and giving appellants reasonable opportunity of being heard in the matter. According to the learned counsel, appellants were entitled to have an opportunity to furnish an explanation to satisfy the Commissioner about the delay caused in making the payment and it is only upon the Commissioner finding the explanation to be unsatisfactory, the order imposing penalty could have been passed. In support of his contention, learned counsel for appellants relied upon the decision of this Court in the case of *Udhav Rangnathrao Pawar v. Sheshrao Ramji Jogdand* and *anr* reported in 2009 SCC OnLine Bom 1348 wherein this Court has taken a view that binding precedent is that before imposing penalty reasonable opportunity to the employer to defend the question of imposition of penalty is to be granted. Learned counsel for appellants submitted that in the present case also no opportunity was granted to appellants by issuing show cause and, therefore, the order passed by learned Commissioner below liable to be set aside.

9. As observed earlier, none appeared for respondents after giving an opportunity to put up their case.

10. In order to deal with submissions made by learned counsel for appellants, substantial questions of law arise for determination are, as follows:

(1) whether the order granting compensation by learned Commissioner below is justified?

(2) whether the order imposing penalty without issuing show cause notice is bad in law and, therefore, the same is liable to be set aside?

11. In order to deal with submissions made by learned counsel for appellants, it is necessary to reproduce provisions of Section 4-A 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.]"

12. 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.

13. 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.

14. Section 4-A 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 4-A of the Act.

15. Thus, in the present case, Demand Notice was issued on 22.5.2002. The appellants have challenged not only the penalty and interest but also challenged compensation amount. In order to find out whether learned Commissioner below who recorded finding that there exists relationship of employer and employee between appellants and the deceased and whether finding recorded by learned Commissioner below that appellants are liable to pay compensation are supported by evidence on record. If the said finding is supported by evidence on record, appellants are liable to pay compensation.

16. To support the contention on behalf of claimants, Hiralal (PW1) entered into witness box. He is labour and was working with the deceased. He stated that at the time of the incident age of the deceased was 20 years. The work of construction of complex of Gowardhandas Agrawal was in progress. The complex was of 400 to 500 shops. The deceased was getting Rs.90/- per day. Gowardhandas Agrawal had given him wages. No contractor was appointed. Only one leader was there and through the said leader wages were paid to the deceased. The said accident occurred on 28.9.2001. At that time, the deceased was working on third floor and due to slip of leg the deceased fell down from third floor and died on the spot. Admittedly, he is not eyewitness. However, his evidence is to the extent that appellants have engaged the deceased for carrying out the work. He is cross-examined at length and during cross-examination it came on record that respondent No.5 is Contractor. He admitted that Dasmad Das i.e. respondent No.5 was giving him work and also giving him wages. He admitted that the deceased was working with him, but he denied that respondent No.5 was paying wages to the deceased.

17. Ramkumar (PW2) is the father of the deceased who testified that the deceased was his son and working with appellant No.1. He stated about the occurrence of the accident. Admittedly, he is not an eyewitness. During cross-examination, he stated that respondent No.4 used to supervise the building work of Agrawal Complex. He further admitted that he is not aware whether the deceased was working with respondent No.4. He further admitted that he is not aware who paid wages to his son.

18. Ramesh Taide is PW3. As per his evidence, he was working in Town Planning

Section of Nagar Parishad. As per the record, documents shown to him are certified issued by his department. It is the proposed plan of Madan Mahal and the plan was sanctioned by Municipal Corporation. As per his evidence, the said plot wherein plan was sanctioned is in the name of Shantabai Gowardhandas Agrawal, appellant No.2. During cross-examination, he admitted that Gowardhan Madanlal Agrawal is not owner of the said building. He also admitted that with the said building Gowardhan Agrawal has no concern. He stated that he has no idea who is carrying out the construction work.

19. Perusal of evidence above reveals that the deceased was engaged by appellants.

20. To rebut the evidence, respondent No.4 himself stepped into the witness box and deposed that he has no concern with the deceased. He was working as Civil Engineer with Sadique Company. During his cross-examination, he admitted that the contractor is acquainted to him. He admitted that Sadique and Company deals with construction work with the help of respondent No.5 who is contractor along with other contractors. He, however, denied that he had sent respondent No.5 at Paratwada to execute the work of Madan Mahal. Respondent No.5 also stepped into witness box and deposed that he was called upon by appellant No.1 to do centrine work. He was sent through Panpaliya from Amravati to Daitwada for doing centrine work. He was engaged by appellant No.1 along with Hiralal and it was appellant No.1 who used to pay wages to him for the work done. Appellants are owners of Madan Mahal. The work was given to supervise by appellant No.1 and appellant No.1 used to supply him centrine material. He is cross-examined at length and he stated that during cross-examination that he never met with respondent No.4 regarding the work of Madan Mahal. It further came in his cross-examination that for carrying out Madan Mahal work he was engaged by appellant No.1. All workers including the deceased were engaged by appellant No.1. On the day of the accident, the deceased was working at Madan Mahal on third floor. Thus, cross-examination of this witness shows that appellants had engaged the deceased to carry out the said work.

21. Thus, the evidence brought on record by claimants shows that respondent Nos.4 and 5 were engaged by appellants to carry out the construction work. Nothing is on record to show that the deceased was engaged by the Contractor. On the contrary evidence of PW1 and PW2 specifically shows that appellants have engaged the Contractor as well as labourers to carry out the construction work. On the basis of the said evidence it is crystal clear that relationship between the deceased and appellants exists as master and servant. As the accident took place during the course of employment and in the course of employment and, therefore, appellants are jointly and severally liable to pay compensation. The evidence of PW3 also shows that the construction work was carried out on the plot owned by appellants. Thus, findings recorded by learned Commissioner below to that effect is that it was appellant No.1 who used to pay the deceased Rs.90/- per day and Rs.2700/- per month and the deceased was 20

years old. Appellants tried to dislodge the claim of claimants. However, appellants have not stepped into witness box to rebut the evidence of claimants and other witnesses. PW1 is also other labour who was working along with the deceased. His evidence shows that he as well as the deceased was engaged by appellants. The documents placed on record as regards the accident, wages, and age of the deceased confirm that the deceased was working along with present appellants. The spot panchanama and merge report show that the alleged incident took place while the deceased was working at Madan Mahal. Though statutory notice was served upon appellants as well as respondent Nos.4 and 5, the said notice was not replied by them.

22. The fact that the deceased met with an accident during the course of employment, when he was working on third floor while working at Madan Mahal, PW1 categorically stated that the deceased was working on the said day at Madan Mahal and appellant No.1 used to pay wages to the deceased. PW1 was one of workers who was leader of all workers. RW3 who alleged to be the contractor also stepped into witness box and stated that he is not contractor, but he holding position alike to Mukadam. RW1 also admitted that RW2 is not having any licence of contractorship. The evidence of RW1 and RW2 shows that the deceased was engaged by appellant No.1.

23. Thus, the entire evidence on record sufficiently shows that appellants used to pay wages to the deceased as well as other workers.

24. Coming to the next question as to whether finding of learned Commissioner below holding appellants to pay compensation is proper. The evidence on record shows that appellants decided to construct a big shopping_cum_residential complex at the plot owned by appellant No.2 which was situated at Jaisthambha Chowk, Paratwada. The construction undertaken by them is not their trade or business. The appellants have not produced any evidence to show that they handed over the construction work to Sadique and Company and Sadiue and Company carried out the construction through Contractor i.e. respondent No.5. Thus, the evidence on record sufficiently shows that appellants engaged the deceased to carry out the construction work along with respondent No.5. Thus, the finding recorded by learned Commissioner below is proper finding of fact based on an appreciation of evidence. The said finding cannot be called as perverse as such, no interference is called for in the said finding. Thus, no ground is made out to interfere with the said finding and, therefore, no interference is called for.

25. The next contention of learned counsel for appellants that the penalty should not have been imposed without issuing show cause notice. He made a reference of Section 4-A of the said Act. By careful reading of the said Section, it is clear that the provision is made in order to ensure that the workman to whatever the employer is prepared to pay immediately, pending the decision. The provision envisaged is a mandatory in character and it has to be followed strictly. The said Act is a 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. The Court always has to take it pedantic approach to the provisions to achieve the object of the said Act. Section 4-A of the said Act as stated above is mandatory and whenever the compensation was due i.e. as soon as the notice of accident is given under the Section, within one month from the date, but it is due from the date of accident, the compensation has to be paid when it falls due as provided under the said Section.

26. 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.

27. 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.

28. 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).

(j) 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.

29. This, in view of provisions of under sub-clause (b) of sub-section (3) of Section 4-A 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 provision after issuing show cause notice to the employer concerned who will have a reasonable opportunity to show cause why, on account of some justification on his part for the delay in payment of the compensation amount, he is not liable for this penalty. It has further been held that if ultimately, the Commissioner after giving reasonable opportunity to the employer to show cause, takes a view that there is no justification for such a delay on the part of the insured employer and because of his unjustified delay and due to his personal fault he is held responsible for the delay, then the penalty would be imposed on him.

30. The show cause notice contemplated by clause (b) of sub-section (3) of Section 4-A of the said 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 of the order by the Commissioner determining the compensation. In view of this, order imposing penalty of Rs.1,51,200/- determined by the Commissioner, needs to be quashed and set aside as no show cause notice was issued to appellants before imposing the said penalty and, therefore, a direction is required to be given to learned Commissioner below to issue a show cause notice providing appellants a reasonable opportunity of being heard in the matter and to furnish the explanation for the delay caused in making the payment of arrears of compensation and interest, and thereafter to pass an appropriate order.

31. In the decision of the Honourable Apex Court in the case of Ved Prakash Garg vs. Premi Devi and ors cited supra, aspect of imposition of penalty upon issuance of show cause notice is not taken into consideration by learned Commissioner below before imposing penalty.

32. In view of decisions cited supra and in view of discussion above, the appeal deserves to be partly allowed. In the result, I pass following order:

ORDER

(1) The judgment and award dated 3.10.2006 passed by learned Commissioner for Workmen's Compensation at Amravati in Application (WCA) No.11/2002 to the extent of imposing penalty Rs.1,51,200/- upon appellants is quashed and set aside.

(2) The appellant is directed to appear before learned Commissioner below and to show cause in respect of the penalty of Rs.1,51,200/- proposed to be levied by learned Commissioner below. Upon receipt of explanation, learned Commissioner below shall hear the appellant and pass appropriate orders in accordance with law.

(3) Rest of the order passed by learned Commissioner below is maintained.

(4) There shall be no order as to costs.