

(2013) 07 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.A. No. 1282 of 2002

Naval Singh Sahkari Shakkar Karkhana Maryadit	APPELLANT
Vs	
Commissioner for Workmen's Compensation, Khandwa and Others	RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2014) 3 ACC 52 : (2014) ACJ 917

Hon'ble Judges : Anil Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anil Sharma, J.—This appeal has been filed by the appellant/employer u/s 30 of the Workmen's Compensation Act, 1923 being aggrieved by the judgment dated 20.5.2002 passed by the learned respondent No. 1 in Case No. 30 of 2000 (WCF) imposing penalty of Rs. 90,000 on the appellant. Briefly stated facts of the case are that the deceased Vinay Kumar Mishra was working with the appellant as peon and on 13.4.2000 he died due to heart attack when he was on duty. Legal representatives of the deceased filed claim under Workmen's Compensation Act and the learned Commissioner/respondent No. 1 has awarded Rs. 1,84,170 as compensation to be paid to the respondent Nos. 2 to 5 by the insurer and also imposed penalty of Rs. 90,000 on him.

2. Being aggrieved by the impugned judgment, the appellant/employer has filed this appeal on the ground that the learned Commissioner has not assigned any reason for imposing penalty and there was no delay on the part of the appellant for holding him liable for payment or imposition of penalty.

3. The following substantial question of law has been framed:

Whether the learned Commissioner is justified in awarding maximum penalty without assigning any reason and overlooking the fact that there was no fault on the part of the appellant/employer?

4. Learned counsel for the appellant has drawn attention towards the proviso (b) of sub-section (3) of section 4A of the Workmen's Compensation Act, 1923 which is reproduced hereinbelow:

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.

5. Learned counsel for the appellant has submitted that no opportunity of hearing has been given to the appellant before imposing penalty on him even there is no finding that the employer has failed to deposit the compensation with the Commissioner.

6. Learned counsel for the appellant has further submitted that it is not in dispute that the deceased died due to heart failure and according to section 3 of the Workmen's Compensation Act, liability for compensation against the employer arises only when the workman has sustained any injury by accident arising out of and in the course of his employment. If the workman dies due to any disease then according to proviso (b) to sub-section (2) of section 3, it is to be proved that the disease has arisen out of and in the course of employment and further it must be an occupational disease peculiar to the employment, in the absence of these facts, employer cannot be held liable for payment of penalty.

7. On perusal of the impugned judgment it is clear that there is no finding of the learned Commissioner with regard to liability or responsibility of the appellant to pay the penalty and there is no issue in this regard and simply in the last para of the judgment, penalty has been imposed. Thus, the judgment passed by the learned Commissioner so far as it relates to payment of penalty is without any reason. Therefore, the learned Commissioner is not justified in imposing the penalty upon the appellant/employer.

8. In view of the above, the substantial question of law is decided in favour of the appellant/employer and against the claimants. The appeal is allowed to the extent of imposition of penalty of Rs. 90,000 on the appellant/employer and is hereby quashed. The impugned judgment is quashed to the extent of imposition of penalty of Rs. 90,000 on the appellant/employer. Record be sent back.

No order as to costs.