

(2002) 07 JH CK 0046
In the Jharkhand High Court
Case No : M.A. No. 99 of 2001

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Sri Chotelal Mahato and Another		RESPONDENT

Date of Decision : 02-07-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 4A(3)

Citation : (2002) 95 FLR 96 : (2003) 1 LLJ 102

Hon'ble Judges : Vinod Kumar Gupta, C.J.;Tapen Sen, J

Bench : Division Bench

Advocate : Banani Verma, for the Appellant; A. Sen, for the Respondent

Final Decision : Allowed

Judgement

1. The accident in question occurred on 16.10.1993 and the complaint petition was filed under the provision of Workmen's Compensation Act, 1923 sometime in the year 1994. Sub-section (3) of Section 4-A of the Workmen's Compensation Act, 1923 as it presently stands was inserted through an amendment in 1995 being effective from 15th September, 1995, Clause (b) of the Sub-section (3), supra, reads thus :--

"4-A(3)(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 per cent 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,"

2. First of all there should be a clear finding by the Tribunal with respect to the absence of any reason for the delay and only based on such finding the Tribunal can direct that the employer shall pay the penalty as stipulated in Sub-section (3). Secondly the penalty amount is to be paid by the employer only after a proper show cause notice has been issued to the employer and he has been

afforded a reasonable opportunity of explaining as to why the penalty be not imposed against him. Both these requirements of law, being mandatory not having been met in the award under challenge in this appeal, the part of the award which imposes the penalty is declared to be null and void. It is accordingly, set aside,

3. To that extent the appeal is allowed.

No order as to costs.