(2002) 12 JH CK 0046

In the Jharkhand High Court

Case No : M.A. No. 109 of 2002

Rajendra Prasad Shah and Another APPELLANT

Vs

The New India Assurance Company Ltd. and Another RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

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

Citation : (2003) 1 JCR 295 : (2003) 2 ACC 40 : (2003) 96 FLR 1022 : (2003) 2 LLJ 446

Hon'ble Judges : V.K. Gupta, C.J;Ramesh Kumar Merathia, J

Bench : Division Bench

Advocate : S.L. Agrawal and A.K. Pandey, for the Appellant; D.C. Ghose and Rajesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

1. Limited notice was issued on 2.9.2002 restricted to that part of the Award which related to the imposition of penalty upon the appellants (the compensation amount and the interest was payable by the Insurance Company).

2. Learned counsel appearing for the appellants has drawn our attention to the Proviso to Clause (b) of Sub-section (3) of Section 4-A of the Workmen''s Compensation Act, 1923 and has submitted that in terms of the proviso it was incumbent upon the Commissioner to have afforded a reasonable opportunity to the appellants of showing cause as to why the penalty be not imposed upon them. Sub-section (3) of Section 4-A reads thus : .

"4-A. Compensation to be paid when due and penalty for default.--

(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 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."

3. A reading of the Award suggests that the Commissioner has mechanically and without any application of mind held the appellants liable to pay the penalty without taking recourse to mechanism provided in the Proviso (supra) because admittedly no opportunity whatsoever was given to the appellants to show cause as to whether they are liable to be saddled with the payment of penalty amount or not. In the case of Ved Prakash Garg Vs. Premi Devi and others, . There Lordships of the Supreme Court have clearly observed and held that in so far as the liability to pay the penalty is concerned, it can not be said that it automatically flows from the main liability incurred by the employer under the Act and that the penalty amount therefore is outside the sweep of the term "liability incurred".

4. Based on the aforesaid discussions we find that the Commissioner without giving reasonable opportunity has imposed the penalty upon the appellants. The impugned imposition of the penalty is therefore set aside only on the ground that the opportunity of showing cause was not afforded to the appellant.

5. It shall be open either to the claimants or the Commissioner, either suo motu or otherwise, to initiate proceedings for imposition of penalty in accordance with law and to conclude the same on the merits of the case, if so warranted.

6. The appellant is allowed to the extent indicated above. No order as to costs.

