

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF JUNE 1999

BEFORE

THE HON'BLE MR.JUSTICE M.P.CHINNAPPA

M.F.A. No.2542/1998

Between:

The Chairman,  
Sri.Gajanana Motor Transport  
co. Ltd., Sagar,  
Shimoga District. .. Appellant

(By Sri. R.Gopal, Adv.)

And:

1. K.Jayaram,  
s/o late Kariyappa,  
major,  
R/o Belandur village,  
Tyagarti Hobli,  
Sagar Taluk, Shimoga Dist.
2. The Commissioner for Work-  
mens' Compensation,  
Shimoga District,  
Shimoga.
3. The United India Insurance  
Co. Ltd., Shimoga  
by its Manager. .. Respondents.

(By Sri. M.Rydraiah, Adv. for R-1 and  
Sri. H.G.Ramesh, Adv. for R-2).

This M.F.A. filed u/s.30(1) of W.C.Act  
against the Judgment and order dt. 23.4.98  
in W.C. No.KPK.KS.5/96 on the file of W.C.  
Commissioner, Shimoga allowing the claim  
petition partly for compensation.

This M.F.A. coming on for final hearing  
this day, the Court delivered the following:-

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JUDGMENT

The second respondent herein awarded a compensation in favour of the first respondent holding that the first respondent was the employee of the appellant and he sustained non-scheduled injuries during the course of his employment and therefore, he is entitled for a total compensation in a sum of Rs.34,445/- with 6% interest.

2. Further, the second respondent also directed to pay the penalty in a sum of Rs.10,000/- for having not deposited the amount within the stipulated time. The third respondent was also made liable to pay the compensation awarded and also the interest which has been deposited by the Insurance Company. But only the appellant-the employer preferred this appeal against the penalty imposed on him.

3. Heard the learned counsel for the appellant and the learned counsel for the respondents.

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4. It is no doubt true that the second respondent raised an issue as to whether penalty should be imposed on the appellant and in paragraph 17 of the order he has given reasons to the effect that the appellant having known that the claimant was his employee and he sustained injuries during the course of his employment and the appellant is liable to pay compensation and failed to deposit the amount within the stipulated time and further the appellant dragged on the matter without any reason<sup>and</sup> caused irreparable loss to the claimants. No doubt this finding would be acceptable in a case of scheduled injuries as defined w/s.4 of the Act wherein the employer would know the actual amount payable and in that event, it is his duty to deposit the amount within the stipulated time. But in this case, as indicated above all the injuries sustained by the claimant is simple as per the certificate issued by the Doctor and marked as P-3, and therefore, the total amount payable by the employer will have to be determined by the Commissioner after assessing the evidence adduced by both the parties. The Commissioner

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has assessed the evidence and determined the amount payable with interest. The Commissioner ought to have given a reasonable time for the appellant to pay the amount. It is not out of place to mention that the Insurance Company did deposit the same within the reasonable time. That being the case, imposition of penalty of Rs.10,000/- on the employer is contrary to the very object and purpose of the Act.

5. The learned counsel for the respondent however contended that the penalty imposed by the Commissioner would go to the poor employee. But the claimant has sought <sup>only</sup> Rs.20,000/- in this petition. The Commissioner has awarded Rs.34,445/- which is inclusive of interest. Under the circumstances, it cannot be said that by setting aside the order any prejudice would be caused to the claimants.

6. Therefore, this petition is allowed and the impugned order in so far as it relates to imposition of penalty of Rs.10,000/- as against this appellant is set-aside.

Sd/- JUDGE