

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1538 OF 2014

Mangala Shyam Sangale
and Others

.. Appellants

Versus

Asaramji Trimbak Jaibhaye
and Another

.. Respondents

Shri Pavankumar S. Agrawal, Advocate for Appellants.

Respondent No. 1 served.

Shri S. R. Bodade, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 31ST AUGUST, 2015.**

PER COURT :

1. Mr. Agrawal, the learned counsel for appellants submits that, the present appeal is restricted to the extent of non considering the salary of the deceased as Rs. 6,000/- (Rs. Six Thousand Only) per month. According to the learned counsel, the evidence on record is produced in the shape of salary certificate **Exh. 23** stating that, the deceased driver was getting Rs.6,000/- (Rs. Six Thousand Only) per month. The learned counsel submits that, it was an error on the part of Commissioner, Workmen's Compensation, to consider the salary of the deceased as Rs.4,000/-(Rs. Four Thousand Only) per month. The

Respondent No. 1 accepted the salary certificate and did not dispute the same. According to the learned counsel there was no impediment to consider salary of the deceased as Rs.6,000/- (Rs. Six Thousand Only) per month.

2. Mr. Bodade, the learned counsel for the Respondent No. 2 submits that, the salary certificate is not proved, its contents are not proved. The owner has not stepped into the witness box to prove the contents of the salary certificate. In absence of the proof of the contents, the salary certificate is rightly discarded.

3. I have considered the submissions, canvassed by the learned counsel for the respective parties.

4. The claimant No. 1 has stepped into the witness box. The owner has declined to cross-examine the claimant, thereby accepting the salary certificate issued by him. The said salary certificate issued by the respondent / owner is admitted by the owner. There was no reason to discard the said certificate when the author of the said certificate itself does not dispute it. The accident is recent one i.e. of January, 2013. Rs.6,000/- (Rs. Six Thousand Only) per month is a reasonable amount which a driver would be getting. Driving the vehicle is a skilled job. The contention is supported by the documentary evidence, as such, there was no impediment to consider the salary of the deceased as Rs. 6,000/- (Rs. Six Thousand Only) per month.

5. In light of the above, the calculations will have to be made considering 50% of the amount of Rs. 6,000/- (Rs. Six Thousand Only) per month. The age of the deceased was of 23 years. As such, the multiplier of 219.95 would be applied. Hence the claimants would be entitled for Rs. 6,59,850/- (Rs. Six Lacs Fifty Nine Thousand Eight Hundred Fifty Only).

6. Considering the above, the order passed by the Commissioner, Workmen's Compensation, is modified to the extent that, Respondent No. 2 is directed to pay compensation of Rs.6,59,850/- (Rs. Six Lacs Fifty Nine Thousand Eight Hundred Fifty Only) instead of Rs. 4,39,900/- (Rs. Four Lacs Thirty Nine Thousand Nine Hundred Only). The rest of the order passed by the Commissioner, Workmen's Compensation, is upheld and maintained.

[S. V. GANGAPURWALA, J.]

sam/Aug. 15