

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.92 OF 1999

The New India Assurance Co. Ltd.,
Head Office New India Assurance,
Bombay 400 001

The Branch Office at
Jalgaon, Divisional Office,
Nandore Market near Dadhiwala
Bungalow, Jalgaon Divisional Office
at Adalat Road, Aurangabad,
through its Divisional Manager
and Constituted Attorney

Mr.Namdeo Gangaram Mali

..Appellant

Versus

1] Smt.Sayakabai Dhudku Patil,
Aged about 50 years,
occ.Household Work,
r/o.Wadi Chowk, Near Killa Amalner,
Dist.Jalgaon

2] President / Secretary,
Jalgaon Mathadi and Asarankshit
Kamgar Mangal, c/o. Assistant
Commissioner of Labour, Rajendra
Bhavan, Vivekanand Nagar,
Sindhi Colony,
Jalgaon

3] Shri.Gulabchand Devsibhai,
M/s. Darshan and Company,
General Merchants and Commission
Agents, Bombay Galli,
Amalner, Dist.Jalgaon

..Respondent

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Mr.V.N.Upadhye, advocate for appellant

Mr.S.P.Shah, advocate i/b. Mr.Girish Rane,
advocate for respondent no.1

Mr.R.M.Deshmukh, advocate for respondent no.3

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CORAM : M.T. JOSHI, J.

DATE : JANUARY 14, 2015

JUDGMENT :

Heard both sides.

2] Aggrieved by the directions issued by learned Commissioner under Workmen's Compensation Act to pay the compensation of Rs.One lakh for the death of employee – Dhudku, original respondent no.3 – the Insurance Company has preferred present appeal.

3] Upon hearing both sides, it appears that the challenge of present appellant is three-fold.

- i. That the policy of the insurance secured by respondent no.2 i.e. the Mathadi and Asarankshit Kagar Mangal (Board) does not cover the risk under the Workmen's Compensation Act.
- ii. That there was no employer and employee relationship between respondent no.2 - Board and the deceased since the deceased was in the employment with present respondent no.3.
- iii. On the ground of grant of excess compensation than provided by the Act.
- 4] With the help of both the sides, I have perused copy of the policy of insurance, which would show that it was a Janata Policy as well as miscellaneous accidents insurance policy. Once the Miscellaneous Accident Insurance Policy is taken by the Board, naturally, it would cover all

the risk including the death due to accident in the course of the employment.

5] As regards the issue of the employer and employee relationship, it is to be noted that according to the provisions of the Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969, the Board is merely a welfare board acting in between the employer and employees i.e. Mathadi workers to see that there is no exploitation of the workers. The salary earned by the Mathadi worker is to be deposited with the Board and the Board, ultimately, disburses the same to the concerned employee. In that view of the matter, there is no force in the plea that there was no employer and employee relationship.

6] As regards the third issue i.e. regarding the compensation of Rs.One lakh, it is to be noted

that as per the provisions of Section 4-A, the factors required to be taken into consideration are salary and the age of the deceased. The deceased was fifty years old at the time of the accident and his salary was Rs.1,200/- per month. In that view of the matter, as per the provisions and the Schedule, the factor of 153.09 should be applied and the death compensation would be Rs.61,236/-.

7] Mr.Shah submits that learned Commissioner has given reason for non-grant of penalty from the appellant, that the claim of respondent no.1 was seriously disputed. He submits that this is not a valid ground.

8] On the other hand, Mr.Upadhye submits that the insurer cannot be directed to pay the penalty as there is no contract regarding payment of the penalty.

9] Mr.Deshmukh, learned counsel for respondent no.2 submits that in view of the contract of insurance, the insurer will be liable to pay all the liability.

10] It should be seen that the deceased was a Mathadi Kamgar. Respondent no.3 being the original employer, ought to have communicated the facts to respondent no.2 – Board, who could have, thereafter, intimated it to the appellant insurer. In these circumstances, respondent no.3 would be liable to pay the penalty.

11] Mr.Deshmukh submits that no penalty should be granted as no sufficient opportunity was not given. It should, however, be noted that the application claiming the penalty was made and learned Commissioner has refused to grant the penalty after hearing both sides and hence, sufficient opportunity was given.

12] Considering the facts on record, in my view, an amount of Rs.10,000/- towards penalty would be just and sufficient.

13] As regards the interest, though Mr.Upadhye submits that at the time of the accident, there was no provision for grant of interest, which has been inserted lateron by way of amendment of 1995, in view of the delay in payment of compensation, interest can always be awarded.

14] In the circumstances, the following order :-

a] The appeal is partly allowed;

b] The appellant as well as respondent nos.2 and 3 are directed to jointly and severally pay an amount of Rs.61,236/- together with interest at the rate of 9% per annum from the date of passing

of the order by the learned Commissioner till deposit of the amount.

C] Respondent no.3 is directed to pay the penalty of Rs.10,000/- to respondent no.1 within a period of four weeks from the date of this order. Upon failure, the amount of penalty shall carry interest at the rate of 9% per annum from the date of failure.

d] Respondent no.1 – Smt.Sayakabai would be at liberty to withdraw the amount as per the award after a period of sixty days after deposit of the amount.

e] Similarly, the appellant is also at liberty to withdraw the excess amount after sixty days from the date of the deposit of the amount.

f] In view of above, Civil Application No.111 of 2007 for production of documents, filed by the appellant, stands allowed.

[M.T. JOSHI, J.]

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