

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

32 FIRST APPEAL NO. 314 OF 2003

SHAIKH NABI SHAIKH AMIR & ORS.

VERSUS

SMT. SHAMINBANO RAISE AHMADKHAN PATHAN & ORS.

...

Advocate for Appellant : Mr. V J Dixit and
Mr. L V Sangit

Advocate for Respondent No.2: Mr.A B Gatne 2

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CORAM : S. V. GANGAPURWALA, J.

DATE : 29th September, 2015

PER COURT :

1. The present appellants had filed application for compensation under the Workmen's Compensation Act on account of death of Shaikh Javed. The Commissioner for Workmen's compensation partly allowed the application. The present appeal is filed for further enhancement.

2. Mr.Sangit, the learned counsel for the appellants, submits that age of the deceased was 20 years 8 months and four days as on the date of the accident. As per schedule IV of the Workmen's Compensation Act, for computing the age, completed years of age on the last birth day of employee immediately, preceding the date on which the

compensation fell due, is to be considered. As per the same, the age will have to be considered as 20 years. The factor would be 224 instead of 222.71 as considered by the Commissioner. The learned counsel submits that even as per the statute, interest payable is 12% per annum and the Commissioner has awarded interest @ 9% per annum. As far as income is concerned, the Court should have considered the income of Rs.2,200/- per month as claimed. Only because no document was produced, the Commissioner has considered only Rs.1600/-. The same is erroneous.

3. Mr. Gatne, the learned counsel for respondent No.2-Insurance company submits that the Commissioner for Workmen's Compensation has considered income on the higher side. No document was produced by the claimant regarding the salary/wages of the deceased. As per minimum wages Act, the salary would come to Rs.920/- per month. Still, the Commissioner has considered salary as Rs.1600/- per month. The factor is rightly applied. The deceased was more than 20 years and 8 months as on the date of the accident. According to the learned counsel, no error has been committed by

the Commissioner while passing the award.

4. With the assistance of the learned counsel, I have gone through the judgment.

5. The Apex Court has now settled the law with regard to the payment of interest. The Insurance company is liable to pay interest amount alongwith the principal sum. The discretion is not vested with the Court. The interest, as per the statute, is 12% per annum.

6. As far as application of factor is concerned, it depends upon the age. The age of the deceased, as per schedule IV, has to be considered on the basis of completed years of age on the last birth day of the employee immediately preceding the date on which the compensation fell due. The age, as such, will have to be considered as 20 years and the factor to be applied would be 224 instead of 221.71 as applied by the Commissioner.

7. There was no proof of income produced by the claimant. There was no salary certificate produced nor

the opponent No. 1 was examined. The Commissioner has rightly considered the income as Rs.1600/- per month.

8. In light of above, the factor to be applied would be 224 x 800. The same would come to Rs.1,79,200/-. In the result, I pass following order:

- i. The opponents are jointly and severally liable to pay Rs.1,79,200/-, inclusive of the amount payable under no fault liability, along with interest @ 12% per annum from the date of the order passed by the Commissioner till realization.
- ii. The amount already paid would be adjusted as on the date, the same is paid.
- iii. First Appeal is accordingly disposed of. No costs.

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(S. V. GANGAPURWALA, J.)

JPC