

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 327 OF 1999

- 1] Padminbai W/o Balu Kambale,
Age – 48 years, Occu.: Household
affairs R/o Indiranagar, Latur
 - 2] Sidheshwar S/o Balu Kambale,
Age – 17 years, Minor U/g. Appellant No.1,
Occu. : Nil
R/o Indiranagar, Latur
 - 3] Narmada D/o Balu Kambale,
Age – 16 years, Minor U/g.
Appellant no.1, Occu.: Education,
R/o Indiranagar, Latur
 - 4] Ambarnath S/o Balu Kambale,
Age – 5 years, U/g. of his natural
mother Padminbai i.e. appellant no.1
 - 5] Limbraj S/o Balu Kambale,
Age – 4 years, Minor U/g. of
his natural mother Padminbai
i.e. appellant no.1
- .. Appellants
(Orig. Claimants)

VERSUS

- 1] The State of Maharashtra,
Through Collector, Latur
 - 2] Tahsildar, Tahsil Office,
Latur, Dist-Latur
- .. Respondents

Mr. P.R. Tandale, Advocate for the appellants
 Mr. S.G. Sangle, AGP for the respondent/State

CORAM : M.T. JOSHI, J.
DATE : 15/01/2015

ORAL ORDER :

1. Heard both sides.

2. The present appeal is arising out of the award of the Commissioner under the Workmen's Compensation Act, dismissing the application of the present appellants for grant of compensation, though ex-gratia amount of compensation of Rs.25,000/- was granted.

3. Deceased Balu Kambale was the husband of the present appellant no.1. Appellant nos.2 to 5 are the issues of the couple. The deceased was working as a Kotwal with the respondent-State for a salary of Rs.950/- per month. On 24/6/1993 while he was on his duty in a godown, at that time, according to the appellants, there was some pain in his chest and he died due to the failure of heart on 26/6/1993. According to the appellants, in view of the duty at the godown, the deceased was always under the stress. He was compelled to carry the said duty of watchman in the night and, therefore, heart failure has occurred and thus the death has caused during the course and out of his employment. Therefore, the necessary compensation was claimed.

4. The respondent-State came with a case that the deceased Balu was not a workman under the definition of

the Workmen's Compensation Act. He was the Government servant. Further, the death has not occurred during the course of his employment or arising out of the same and, therefore, it sought dismissal of the application.

5. The learned Commissioner adverted its attention to the definition of 'Workman' finding place in section 2 of the Workmen's Compensation Act and the rules framed by the State Government regarding the appointment and service conditions of the Kotwal. It was further found that there was no casual connection between the death and the employment and, therefore, on both the counts, the application came to be dismissed. However, ex-gratia payment of Rs.25,000/- was directed to be paid. Hence, the present appeal.

6. Mr. Tandale, learned counsel for the appellants submitted that substantial question of law that has arisen in the present appeal is, as to whether in the absence of any medical evidence, the learned Commissioner could have refused the compensation.

Both the learned counsel argued on the basis of the material, as detailed supra.

7. Upon hearing both sides, in my view, no fault can be found with the order of the learned Commissioner for the reasons to follow.

R E A S O N S

8. Admittedly, the deceased was working regularly as Kotwal under the State Government. The learned Commissioner has discussed in detail the provisions in this regard which need not be referred. The learned Commissioner further relied on the ratio of **1991 1 CLR 582 Gujarat High Court** (name of the parties not given) and found that the deceased being a civil servant cannot be called as workman. The reasons cannot be faulted with.

9. The next issue is regarding the fact as to whether, the death has occurred during the course and arising out of the employment. The deceased was around 50 years old at the time of his death due to cardiac arrest. He was appointed as Kotwal and was carrying the duty of night watchman. There is no evidence that his heart failure was the result of any disease received

arising out of the employment. In the circumstances, the learned Commissioner has rightly dismissed the application.

10. Mr. Tandale submits that presently he has no instructions as to whether any compassionate appointment is granted by the State upon death of the deceased. It would however always be open to the legal representatives to claim compassionate appointment as per the rules and regulations. The learned Commissioner has already directed for ex-gratia payment. In that view of the matter, the following order:-

11. The appeal is hereby dismissed without any order as to costs.

[M.T. JOSHI]
JUDGE

arp/