

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

FIRST APPEAL NO. 1568 OF 2015

Vimalbai Suresh Mundke	..	Appellant
Versus		
Ashok Tobacco Processing	..	Respondent

Shri R. C. Patil, Advocate for the Appellant.
Shri Shrikant S. Patil, Advocate for the Respondent.

**WITH
FIRST APPEAL NO. 1571 OF 2015**

M/s Ashok Tobacco Processing Through Partner	..	Appellant
Versus		
Vimalbai Suresh Mundke	..	Respondent

Shri Shrikant S. Patil, Advocate for the Appellant.
Shri R. C. Patil, Advocate for the Respondent.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 25TH AUGUST, 2015.**

PER COURT :

. The First Appeal No. 1568 of 2015 is filed by the claimant on the ground that the Commissioner Workmen's Compensation has not considered actual income of the deceased. The actual income of the deceased was Rs. 5,000/- per month, whereas the Commissioner has considered the income of the deceased as Rs. 55/- per day and has calculated it as Rs. 2,637.40 per month.

According to the learned counsel, even as per the provisions of the Workmen's Compensation Act as on the date of the accident the ceiling was Rs. 4,000/- per month. The learned counsel submits that the oral evidence led by the claimant is not considered by the Commissioner. According to the learned counsel, even the Commissioner erred in not awarding penalty amount to the claimant. The employer did not deposit the entire amount immediately after the accident, but only went on giving false promises that he will construct a bungalow for the claimant and the claimant relying on the assurance did not issue notice. According to the learned counsel, claimant is entitled for the penalty amount U/Sec. 4-A of the Workmen's Compensation Act.

2. Mr. Shrikant Patil, the learned counsel for the employer submits that employer has deposited the entire amount as per the award passed by the Commissioner. The Commissioner has failed to consider that the deceased was not getting Rs. 2,637/- per month. It was only as and when work was available he was being paid the said amount. The maximum income even as per the notification workers of tobacco industry was Rs. 2,200/- per month. The said aspect has not been considered. The interest has also been wrongly awarded, when the appellant had deposited the amount.

3. I have considered the submissions. The appeal under Workmen's Compensation Act can be considered on substantial

question of law only. While considering income, the Commissioner has discussed the evidence on record. The evidence of D.W. No. 1 was also considered, wherein extract of wage register was produced of nine labourers working with the employer. The salary extract shows that each labour was getting Rs. 55/- per day. The deceased was working as watchman. The Commissioner has considered the said aspect and has rightly considered the income to be Rs. 2,637/- per month.

4. As far as non grant of penalty is concerned, the Commissioner has observed that, the employer has deposited the amount of Rs. 1,17,711/- immediately upon receipt of the notice U/Sec. 10-A of the Workmen's Compensation Act within 30 days. The Commissioner has considered the fact that the grant of penalty does not automatically flow from the main liability. It has to depend upon the conduct of the employer also. Even before filing of claim petition, the employer has deposited an amount of Rs. 1,17,711/-. Considering the said fact, the Court has exercised its discretion in not awarding the penalty. The same appears to be reasonable. Both first appeals are dismissed. No costs.

[S. V. GANGAPURWALA, J.]