

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

FIRST APPEAL NO. 2759 OF 2013

Sunil s/o. Ramnath Khandelwal .. Appellant

Versus

Sk. Salam s/o. Sk. Mohammad & Ors. .. Respondents

Mr. R.K. Khandelwal, Advocate for the appellant.
Mrs. Sudarshana Nirban h/f. Mr. R.F. Totla, Advocate for
respondent No.3.

CORAM : A.M. BADAR, J.

DATED : 17.11.2015

P.C. :-

1. This First Appeal is under Section 30 of the Employee's Compensation Act, 1923, by the employer/ original respondent No.2 in W.C. Application No.35 of 2011 decided on 02.11.2012 by the learned Commissioner under the Employee's Compensation Act, 1923. For the sake of convenience, parties shall be referred to by their original capacity.

2. The facts in nutshell are thus:-

. Shaikh Salim (since deceased) was in employment of respondent No.2 – Sunil Khandelwal (appellant) as a Cleaner on the truck. The truck owned by respondent No.2 met with an accident on 19.10.2010 at Khargaon in Uttar Pradesh. As no compensation was deposited with the Commissioner the under the Employee's Compensation Act, 1923, or had been paid to the applicants, they preferred petition for compensation under the Employee's Compensation Act, 1923. After due trial, learned Tribunal was pleased to allow the petition by directing the respondents therein to pay compensation of Rs.4.48 lakhs to the applicants along with 12% interest thereon. In addition, employer i.e. Original respondent No.2 was saddled with amount of penalty of 25% of amount of compensation as he failed to deposit the amount of compensation on the date on which it became due. The order directing payment of penalty at 25% to employer/appellant is challenged in the present appeal.

3. Heard learned Counsel for the appellant. He vehemently argued that the accident happened at Khargaon in Uttar Pradesh on 19.10.2010 and on the very same day, being owner of the truck, respondent No.2/appellant had given intimation of accident to insurer of the truck. Learned Counsel for the appellant further argued that since the date of accident, till conclusion of the proceeding under Employee's Compensation Act, the employer has supported the petitioners, in order to see that they are compensated on account of death of Shaikh Salim. Therefore, in submission of learned Counsel for the appellant, learned Commissioner erred in imposing penalty on the appellant.

4. At the outset, it needs to be noted that the appeal under Section 30 of the Employee's Compensation Act can lie only if substantial question of law is involved. The finding of fact by overlooking relevant provision or by relying on inadmissible evidence can give rise to substantial question of law. Pure finding of

fact based on evidence on record cannot be construed as a substantial question of law.

5. Section 4A of the Employee's Compensation Act, 1923, deals with liability of employer to pay compensation to its employees and section 4A in terms mandates employer that he should deposit amount of compensation due under the Act within one month from the date of it fell due, with the Commissioner. In the case in hand, undisputedly, respondent No.2 (present appellant) was employer of deceased Shaikh Salim who died in the accident arising out of and in the course of employment with respondent No.2/appellant on 19.10.2010. As such, it was liability of respondent No.2/appellant to deposit the same within one month of accidental death of Shaikh Salim occurred on 19.10.2010. It is not in dispute that present appellant has failed to deposit the amount of compensation due and payable to the claimants even till the date of judgment and order of the learned Commissioner under Workmen's Compensation Act.

6. Learned Commissioner has recorded finding that there is no explanation of delay in depositing the amount of compensation. Section 4A (3)(b) of the Employee's Compensation Act, 1923, provides that when there is no justification for delay in depositing the amount of compensation, the employer shall in addition to amount of arrears and interest thereon, pay further sum not exceeding 50% of such amount by way of penalty. In the case in hand, on basis of evidence on record and rather undisputed position emerging on record, learned Commissioner has rightly concluded that there is no justifiable reason for not depositing the compensation within prescribed time. No substance can be found in the argument of learned Counsel for the appellant that he tried to secure the amount of compensation from his insurer. The contract of insurance is contract of indemnity. As such it was incumbent on the part of present appellant to deposit the amount of compensation and then claim it from the insurer.

7. In the wake of no substantial question of law is made out in the present appeal, the appeal is dismissed.

[A.M. BADAR, J.]