

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 886 OF 2004

- 1) Smt. Shital Popat Angre
Age 22 years, Occu. Household,
- 2) Kumar Amar Popat Angre,
Age 4 years, Occu. Nil, minor
- 3) Kumar Pratik Popat Angre,
Age 2 years, minor, Occu. Nil,
- 4) Gulab Yadav Angre,
Age 62 years, Occu. Labour,
- 5) Sau. Kamal Gulab Angre
Age 58 years, Occu. Nil,

Appellant No. 1 is the real mother
of the appellant Nos. 2 and 3.

All R/o. Jakhangaon, Tq. & Dist.
Ahmednagar.

**....Appellants.
(Ori. Claimant)**

Versus

- 1) Shri. Abasaheb Baburao Baraskar,
Age 45 years, Occu. Business and
Agril., R/o. Bhistbaug, Near Don Mahal,
S.No. 43, Bhistbaug, Ahmednagar.
- 2) The New India Assurance Company Ltd.,
Divisional Office at Abbet Building,
Kings Road, Ashoka-Hotel, Ahmdnagar.

**....Respondents.
(Ori. Opponents)**

Mr. N.C. Garud, Advocate for appellants.

Mr. A.M. Gaikwad, Advocate for respondent No. 1.

Mr. V.N. Upadhey, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 2nd December, 2015.

JUDGMENT :

1) The appeal is filed against the judgment and award delivered in Application (W.C.A.) No. 73/2001 which was pending before the Commissioner for Workmen's Compensation and the Labour Judge, Ahmednagar. The claim filed for compensation of Rs. 4,34,380/- in respect of death of Popat Angre in motor vehicle accident is partly allowed. The claim was filed by widow, minor issues and parents of the deceased. The Commissioner has granted compensation of Rs. 1,39,932/-. Heard both the sides.

2) As only quantum of compensation is under challenge, the relevant pleadings and the evidence need to be seen. It is the case of present appellants that the age of the deceased was 24 years and he was getting monthly salary of Rs. 3,000/- by working as a driver with respondent No. 1 - Abasaheb and he was also getting Rs. 50/- per day as Bhatta. The Insurance Company filed written statement and denied that the deceased was getting monthly salary of Rs. 3,000/- and allowance of Rs. 50/- per day from the employer. No specific

defence is taken regarding income in the written statement. The owner filed written statement and he contended that he was paying Rs. 2500/- including Bhatta per month to the deceased. The deceased was working as a driver for more than five years with respondent No. 1. It appears that only in written arguments, the learned counsel for Insurance Company submitted before the Commissioner that the minimum wages fixed by the State Government needs to be considered and the age of the deceased also needs to be considered as 26 years as per the record and accordingly, compensation needs to be calculated. Issues were framed accordingly.

3) The claimants gave evidence which is consistent as per the aforesaid contentions. They denied that the monthly salary of deceased was only Rs. 2500/-. No evidence in rebuttal was given either by the owner or by the Insurance Company. The accident had taken place on 7.6.2001.

4) The Commissioner considered the Government Resolution dated 3.4.2001 prepared by the State Government for fixing minimum wages. The Commissioner has held that the case falls in job Zone III and accordingly, the Commissioner held that minimum wages for driver is Rs. 1300/- per month. On that

basis, the compensation is calculated by the Commissioner.

5) The present appeal was admitted on 1.11.2004 by the other Hon'ble Judge. No specific substantial question of law was formulated. In view of the aforesaid circumstance, this Court asked both the sides to argue on following substantial question of law.

(i) Whether the Commissioner was right in using the G.R. of Government fixing minimum wages when there was substantive evidence on wages ?

6) The learned counsel for Insurance Company placed reliance on the case of Kerala High Court reported as **1988 STPL (Comp.) 197 KER [National Insurance Company Ltd. Vs. Narayanan Nair]**. In this case, the Kerala High Court held that if there is minimum wages notification and there is no convincing evidence on the actual income, salary of deceased, the minimum wages notification can be considered and it is relevant circumstance. He relied on another case of this Court reported as **2013 STPL (Comp.) 1131 BOM [Oriental Insurance Company Ltd. Amravati Vs. Mohammad Sabir and Ors.]**. In that case also, when the award was based on minimum wages payable under Minimum Wages Act, the Court

refused to interfere. It was appeal filed by the Insurance Company. In that case, the salary fixed for skilled worker for Zone II was considered by this Court and further special D.A. allowance which was computed for month was considered as Rs. 1000/- and the amount of Rs. 50/- per day was also considered and the Court had held that the minimum wages were Rs. 3400/- per month as held by the Commissioner. In that case, the accident had taken place in the year 2005 and compensation of Rs. 3,73,915/- was awarded.

7) In the present matter, there is substantive evidence of the claimants and there is the specific case of the owner of the vehicle that he was paying Rs. 2500/- per month and this amount was inclusive of daily allowance. In view of these circumstances, the Commissioner could have considered the amount of Rs. 2500/- per month as the wages of the deceased and on that basis, the compensation ought to have been awarded. This Court holds that the Commissioner committed error in using the minimum wages fixed by the State Government when the deceased was getting higher amount. So, the aforesaid point is answered accordingly.

8) In the result, the appeal is allowed. The judgment

and award of the Commissioner is modified to make the amount of compensation at Rs. 2,69,100/- with interest as awarded by the Commissioner.

[T.V. NALAWADE, J.]

ssc/