

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 662 OF 2012

MSRTC, SANGLI DEPOT.

VERSUS

SUREKHA VITTHAL BADE AND ORS

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Advocate for Appellant : Mr. Bagul D. S.

Advocate for respondents-claimants: Mr. T. B. Choudhari

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CORAM : S. V. GANGAPURWALA, J.

DATE : 19th August, 2015

PER COURT :

1. The present respondents 1 to 4 had filed application for compensation under the Employees Compensation Act claiming compensation on account of death of Vitthal. The factum of death of Vitthal is not disputed so also the aspect that he died during the course of employment.

2. The learned Commissioner for Workmen's Compensation awarded compensation and penalty with interest @ 6% per annum.

3. Mr. Bagul, learned counsel for the appellant submits that the Commissioner has applied the amended provisions while computing the compensation amount. Amendment to section 4(1) (B) raising the income limit to Rs.8000/- was introduced w.e.f. 31.05.2010. The accident had occurred on 11.05.2010. Benefits of the said provision cannot be extended to the claimants. The said amendment is not retrospective in operation. It

will only apply to those who are claiming compensation on the basis of accident, which takes place on or after 31.05.2010.

4. The learned counsel relies on the judgment of the Apex Court in case of **Kerala State Electricity Board Vs. Valsala K. reported in 1999 (8) SCC 254** so also the judgment of learned Single Judge of this Court in the case **Shakanutala Mulchand Yadav & others Vs. Deputy Conservator of Forest & another, reported in 2009 (5) MLJ 628.**

5. According to the learned counsel, the respondents had committed delay in getting heir-ship certificate and immediately on getting the same, the amount of compensation was deposited as per the enactment which was in operation as on the date of accident.

6. Mr. Choudhari, the learned counsel for the claimants submits that actual salary of the deceased was Rs.8351/- as has been observed by the Commissioner for Workmen's Compensation. The same is not disputed. Thus, salary of Rs.8351/- ought to have been considered by the Commissioner while awarding the compensation amount. The earlier ceiling of Rs.4000/- was removed by amendment dated 18.01.2010 and the ceiling of Rs.8000/- was imposed by amendment on 31.05.2010. During the interregnum, there was no ceiling in operation.

7. We have considered the submissions canvassed by the learned counsel for the respective parties.

8. Upon going through the amendment, actually the ceiling of considering Rs.8000/- income is brought into effect with effect from 31.05.2010. The accident has taken place on 11.05.2010. The maximum ceiling of considering the income of Rs.4000/- has been deleted on 18.01.2010. During this interregnum period, there was no maximum ceiling of income to be considered by the Commissioner. Actual salary could have been considered by the Commissioner for Workmen's Compensation. The actual salary of the deceased was Rs.8351/-. However, the Commissioner has considered the salary of Rs.8000/- relying on the amendment.

9. Reliance on the said amendment, even if assumed to be improper, would not affect the judgment as the actual salary of the petitioner itself was Rs.8351/- and there was no maximum ceiling during the relevant period.

10. The interest has been awarded @ 6% only, whereas the Act mandates 12%. However as the claimants have not assailed the same and the said order is passed in 2012, I am not disturbing the same. The penalty is also properly imposed.

11. Considering the aforesaid aspects, no interference is called for. The first appeal as such is dismissed. No costs.

(S. V. GANGAPURWALA, J.)