

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

FIRST APPEAL NO. 1011 OF 2012

The Managing Director, Shri Shankar
Sah. Sakhar Karkhana Ltd. .. Appellant

Versus

1. Mahadeo Kerba Rakh U/G of his
mother and others .. Respondents

Shri Mohit R. Deshmukh, Advocate h/f Shri S. G.
Chapalgaonkar, Advocate for the Appellant.
Shri Shrikant S. Kulkarni, Advocate for Respondent No. 1 to 4.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 30TH SEPTEMBER, 2015.**

PER COURT :-

. The respondent Nos. 1 to 4 had filed application for compensation under the provisions of the Employee's Compensation Act. The same is partly allowed. Aggrieved thereby the employer has filed the present appeal. The learned counsel for the appellant submits that, the appeal involves the substantial question of law in as much as the age of the deceased even as per the postmortem report and the inquest panchanama was 55 years. However, the Commissioner has considered the age of the deceased as 45 years. The Commissioner itself has observed that, there is no evidence on record to substantiate the

age of the deceased. The learned counsel submits that, even the school leaving certificate is produced along with Civil Application No. 11922 of 2015 which would show the age of deceased as on the date of the accident as 57 years. According to the learned counsel it is the case of a perverse appreciation of evidence.

2. Mr. Kulkarni, the learned counsel for respondent Nos. 1 to 4 submits that, the school leaving certificate was not produced before the Commissioner. The deceased was an illiterate person. He was labour appointed for harvesting sugar cane. According to the learned counsel immediately after admission in the school, he had left the school. The parents were illiterate. As such the correct age could not be shown. He was 8 years of age on the date of admission in the school. According to the learned counsel the Commissioner has properly appreciated the evidence on record.

3. This being an appeal under the Employee's Compensation Act can only be considered on substantial question of law. Considering the facts on record the substantial question that arises is whether the Commissioner was correct in arriving at the conclusion of the age of deceased as 45 years without any documents/evidence on record.

4. I have considered the submission canvassed by the learned

counsel for respective parties.

5. The postmortem report and the inquest panchanama show the age of the deceased as 55 years. The admission is taken in the school on 22.10.1958. As on the date of admission the deceased was shown as 8 years of age in a nursery and he had left the school when he was in IIInd standard. I would give some element of benefit to the claimants. As far as the age of the deceased is concerned, considering the age shown, I would consider the age of the deceased as 54 years as on the date of accident i. e. 08.04.2007, considering the school leaving certificate, postmortem report and the fact that, there was no other evidence on record. Considering the above, the multiplier that would be applicable is 139.13. The income is rightly considered. If the multiplier of 139.13 is applied the claimant would be entitled for compensation of Rs. 2,78,260/-.

6. The claimants have already received Rs. 1,00,000/-. As such I pass the following order.

7. The appellant and respondent No. 5 herein shall jointly and severally pay an amount of Rs. 1,78,260/- to the claimants along with interest upon the compensation amount at a rate of 12% per annum from the date of accident till realization. First appeal accordingly is disposed of.

8. The claimants are entitled to withdraw the remaining amount if deposited and entitled to execute the award if remaining amount is not deposited.

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15