

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

905 FIRST APPEAL NO. 1386 OF 2015

**GENERAL MANAGER SHRIRAM JAWAHAR SHETKARI SAHAKARI SAKHAR
UDYOG THR ITS AUTHORISED**

VERSUS

SHANTABAI DINKAR BANGAR AND ANOTHER

...

**Advocate for Appellant : Mr. V.P. Golewar h/for Mr. Joshi
Arvind Ramakant**

Advocate for Respondents : Mr. Chapalgaonkar Shailesh S.

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CORAM : S. V. GANGAPURWALA, J.

DATE : 21st October, 2015

PER COURT :

1. The application for compensation filed by the claimant is allowed. Aggrieved thereby, the present appeal.

2. Mr. Golewar, the learned counsel for the appellant submits that the appellant was not the employer of the deceased. Work was given to the respondent No.2 Mukadam. As the work was allotted to the Mukadam, it was liability of the Mukadam to employ persons. The present appellant is not the employer. Learned counsel further submits that the claimants had stated that the deceased was earning Rs.6,000/- per month. Even pay bills were of lessor amount. Still, the Commissioner has considered Rs.8000/- per month as income, only on the ground of Minimum Wages

Act. The same is illegal.

3. Mr. Chapalgaonkar, the learned counsel submits that the commissioner has to consider the wages as per Minimum Wages Act. The same is rightly considered. According to learned counsel, the present appellant would be liable by virtue of section 12 of the Employees Compensation Act.

4. I have considered the submissions.

5. This being an appeal under the provisions of the Employees Compensation Act, it can only be considered on substantial question of law. As far as relationship of employer employee is concerned, it is admitted by the appellant that respondent No.2 was appointed as Mukadam and it is respondent No.2 who had engaged the labourers for harvesting sugarcane. As such, as per section 12 of the Employees Compensation Act, the appellant would be the principal employer.

6. As far as income is concerned, the claimant has specifically averred that the deceased was getting Rs.6000/- per month. Even pay bills show that sometimes the deceased was paid Rs.5754/-, Rs.4590/- etc. None of

the pay bills show that the deceased was getting more than Rs.6000/- per month. It is a seasonal work. The same will have to be considered. In light of that, substantial question of law that arises is whether the Commissioner for Workmen's Compensation could have gone beyond the pleadings to consider income of deceased. The answer would be in the negative.

7. The proof of income is on record. The Commissioner will be bound to abide by the evidence before it. The Commissioner is required to consider the seasonal nature of the work and other relevant factors. In light of that, the commissioner committed an error in holding income of the deceased @ Rs.8,000/- per month. It ought to have held Rs.6000/- per month.

8. Considering the income of the deceased as Rs.6,000/- per month and applying relevant multiplier of 135.56, the claimant would be entitled to Rs.4,06,680/-. The interest would be payable on lapse of one month from the date of accident. Contention of the appellant that it would be payable from the date of order is erroneous.

9. In the light of above, I pass following order:

- i. Order passed by the Commissioner for Workmen's Compensation is modified.
- ii. The appellant shall pay compensation of Rs.4,06,680/- with interest @ 12% per annum from 2nd April, 2013 till realization of the entire amount.
- iii. The appellant shall also pay an amount of Rs.2,03,340/- to the claimants by way of penalty. The appellant shall also pay Rs.1,21,712/- towards reimbursement of medical expenses.
- iv. The first appeal is accordingly partly allowed. No costs.

(S. V. GANGAPURWALA, J.)

JPC