

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

FIRST APPEAL NO. 1849 OF 2012

M/s. National Insurance Co. Ltd.

... Appellant

VERSUS

Eknath Dhondiba Dhoble & Anr.

... Respondents

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Mr V. N. Upadhye, Advocate for the appellant.
Mr A. R. Borulkar, Advocate for respondent No. 1
Appeal is dismissed as against respondent No. 2

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CORAM : **S. V. GANGAPURWALA, J.**
DATE : **16TH SEPTEMBER, 2015.**

PER COURT:

. Heard learned Counsel for respective parties.

2. Mr Upadhye, learned Counsel for the appellant submits that the income of respondent No. 1 has been considered as Rs. 6,000/- per month, which is illegal. As per the provisions of Workmen's Compensation Act, at the relevant time, the maximum income as applicable could be considered as Rs. 4,000/- per month. According to the learned Counsel, the remuneration by way of commission could not have been considered. The learned Counsel also submits that the penalty cannot be imposed upon the Insurance Company, the same is illegally levied upon the Insurance Company. According to him, even medical expenses could not have been awarded.

3. I have considered the submissions. The income of respondent No. 1 has been considered as Rs. 6,000/- per month. Considering the provisions of Workmen's Compensation Act as existing, the income at the most could have been considered as Rs. 4,000/- per month.

4. This being an appeal under the provisions of the Workmen's Compensation Act, can only be considered on substantial question of law.

5. As far as penalty is concerned, it is a settled proposition of law that the same cannot be imposed upon the Insurance Company. The order to that extent requires to be set aside to the extent of present appellant.

6. Considering the above, the appeal is partly allowed.

7. It is held that the opponents No. 1 and 2 shall jointly and severally pay an amount of Rs. 69,646/- towards compensation and Rs. 35,000/- towards medical expenses to the applicant along with interest at the rate of 12% p.a. on the amount of compensation from the date of application till realization. The order imposing the penalty upon the appellant herein is quashed and set aside. The excess amount deposited by the Insurance Company, if any, be refunded to it.

8. Appeal stands disposed of.

[S. V. GANGAPURWALA, J.]

sgp