

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

**FIRST APPEAL NO. 3401 OF 2011
WITH
CIVIL APPLICATION NO. 13249 OF 2011**

New India Assurance Co.,
Through Sr. Div. Manager,
Legal Hub, Aurangabad

.. Appellant

Versus

Vatsalabai Bakhtarsing Thakur and Others.. Respondents

Shri Dhananjay P. Deshpande, Advocate for the Appellant.
Shri M. M. Bhokariker, Advocate for the Respondent No. 1.
Shri S. S. Patil, Advocate for Respondent Nos. 2(A) and 2(B).
Respondent No. 2(C) served.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 31ST AUGUST, 2015.**

PER COURT :

1. Mr. Deshpande, the learned counsel states that, the present appeal is filed on two questions of law. 1) the interest could not have been saddled upon the Insurance Company from the date of accident and 2) the salary could not have been considered as Rs. 4,000/-(Rs. Four Thousand Only) per month.

2. The learned counsel submits that, the owner has not been examined. The salary certificate issued is of the year, 2008. The accident is of the year, 2001. The said salary certificate cannot be relied. In absence of evidence of the owner and in absence of any other documentary evidence, the Court could not have considered salary as Rs.4,000/-(Rs. Four Thousand Only) per month. The learned counsel further submits that though the accident had taken place in November, 2001, the notice was issued in December, 2004 and thereafter the claim petition is filed in February, 2005. From 2001 to

February, 2005 the Insurance Company could not have been saddled with interest. The Insurance Company could get the knowledge of the alleged accident only after the notice is served upon the Insurance Company. According to the learned counsel, this aspect has not been considered by the Commissioner, Workmen's Compensation.

3. I have heard Mr. Bhokarikar, the learned counsel for the claimant.

4. This being an appeal under the provisions of Workmen's Compensation Act and can only be entertained on substantial question of law. As far as the salary of the deceased is concerned the evidence in this regard has been considered. The owner in his written statement has also admitted the said fact. The salary certificate though subsequently issued is produced on record. The finding of fact has been arrived at by appreciating the evidence.

5. As far as arguments of the learned counsel regarding payment of interest is concerned, the amount becomes payable within one (1) month after the accident has taken place. The date of accident is a matter of record. Till the award is passed by the Commissioner, Workmen's Compensation, neither the owner nor the Insurance company has deposited the amount, though, the Insurance Company had received the notice dated 28.12.2004.

6. Considering the above, the appeal does not involve any substantial question of law, as such the appeal stands dismissed. No costs. Civil application is also disposed of.

[S. V. GANGAPURWALA, J.]

sam/Aug. 15