

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

FIRST APPEAL (ST.) NO. 8227 OF 2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Amol Gatne for the applicant.

Mr. R.B. Chevanke for the respondent no.1.

CORAM : K. K. TATED, J.

DATED : 22/04/2015.

PC.:

. By consent of the both the parties, matter is taken on board for final hearing at the stage of admission.

2 By this First Appeal, the insurance company challenges the Judgment and Award dated 13.09.2013 passed by the Commissioner for Workmen's Compensation and 4th Labour Court, Thane in Application (WCA) No. 2223/C-62/2010, holding that the respondent no.1 claimant is entitled to Rs.7,09,416/- by way of compensation and respondent no.2 Kannubhai Jashbhai Patil is liable to pay interest @ 12 % per annum

3 The learned Counsel for the appellant submits that in the present proceeding, the accident occurred on 12.09.2009 and the applicant sustained injuries. He also sustained disability to the extent of 35%.

Hence, respondent no.1 claimant filed application for claiming compensation of Rs.7,09,416/- on the ground that on the date of accident the claimant was getting salary of Rs.6,000/- per month. The Trial Court considered the salary of the claimant of Rs.6,000/- and awarded compensation of Rs.7,09,416/-. Hence, the present First Appeal.

4 The learned Counsel for the appellant insurance company submits that the impugned Judgment and Award passed by the Trial Court is against justice, equity and good conscience. He submits that they preferred the present First Appeal only on the amount of quantum awarded by the Tribunal. He submits that there is no dispute in the present proceeding that the accident occurred on 12.09.2009. Hence, the old Act i.e. Workmen's Compensation Act, 1923 is applicable. He submits that the old Act was amended on 22.12.2009 i.e. subsequent to the date of accident. He submits that the Tribunal at the time of calculating the compensation considered the salary of claimant @ Rs.6,000/- which is contrary to the provisions of Section 4 of Workmen's Compensation Act, 1923. He submits that as per Section 4(1) explanation (2) monthly wages for the purpose of calculating compensation should not be more than Rs.4000/-. The explanation-II reads thus:

“Explanation II – Where the month wages of a workman exceed (four thousand rupees), his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be (four thousand rupees) only.”

5 The learned Counsel for the appellant submits that admittedly in the present proceeding the Tribunal has considered the salary of claimant @ Rs.6,000/- and therefore, the impugned Judgment and Award passed by the Tribunal is required to be set aside to that extent.

6 The learned Counsel for the respondent no.1 claimant fairly admitted this position. He submits that in the present proceeding the old Act i.e. Workmen's Compensation Act, 1923 is applicable. He also submits that the Tribunal should have considered the salary of the victim to the tune of Rs.4,000/- only. He submits that they have no objection, if, the impugned Judgment and Award is modified to the extent that claimant salary to be considered only Rs.4,000/-. To that effect, the learned Counsel for the respondent no.1 claimant given in writing on Farad. Same is taken on record.

7 Both the Counsel state that it is not necessary to give reasons for passing order.

8 Considering the facts and circumstances of the present case, it is not necessary to issue notice to the respondent no.2 in the present proceeding.

9 Considering the submissions made by both the

parties, the following order is passed:

ORDER

- a) First Appeal is party allowed.
- b) The impugned Judgment and Award dated 13.09.2013 passed by the Commissioner for Workmen's Compensation and 4th Labour Court, Thane in Application (WCA) No. 2223/C-62/2010 is modified to the extent that claimant is entitled for compensation of Rs.4,72,944/- as against Rs.7,09,460/- (Rs.4,000/- minus 60% = 2400 x 197.06). Rest of the order remains as it is.
- c) The appellant to deposit sum of Rs.4,72,944/- in the Trial Court within six weeks from today.
- d) If amount is not deposited within stipulated time as stated herein above, the respondent no.1 claimant Santya Barkya Kom is entitled to execute the Judgment and Award according to law.
- e) Respondent claimant can proceed against respondent no.2 for recovery of interest on Rs.4,72,944/- according to law.
- f) First Appeal stands disposed of accordingly.

(K.K.TATED, J.)