IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No. 12 of 2005

* Divisional Manager,
United India Insurance
Company Ltd., Ahmednagar,
District Ahmednagar,
Through its authorised
Signatory - Senior Divisional
Manager at Aurangabad. .. **Appellant.**

Versus

1) Narayan s/o Bapurao Somase,
Age 70 years,
Occupation : Nil,
R/o Village Moha,
Taluka Parli Vaijnath,
District Beed.

2) Gangabai W/o Narayan Somase,
Age 50 years,
Occupation: Labour,
R/o Village Moha,
Taluka Parli Vaijnath,
District Beed.

3) V.G. Sose,
Contractor Pvt. Ltd.
10, Konark Behind Market yard,
Ahmednagar,
District Ahmednagar. .. **Respondents.**

Shri. V.R. Mundada, Advocate, for appellant.

Shri. Sachin Deshmukh Advocate, for respondents 1 & 2.

Shri. S.S. Jadhavar, Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 10th FEBRUARY 2016

JUDGMENT:

1) The appeal is filed by the insurance company against the judgment and award of the Commissioner, appointed under the Workmen's Compensation Act in WCA No.7 of 2002 which was filed by the present respondents, parents of the deceased. Compensation of Rs.2,69,100/- is given with interest at the rate of 12% per annum. Both the sides are heard.

2) The learned counsel for the insurance company submits that substantial questions of law on the following grounds need to be formulated and decided.

(I) There was no reliable evidence to prove that the deceased was employee of the original owner of truck and so the Commissioner could not have granted compensation under the Workmen's Compensation Act.

(II) There was no material on the basis of which the Commissioner could have held that the age of the deceased was 26 years and there was substantive evidence to show that age of the deceased was 45 years and so the compensation is not correctly calculated.

3) While admitting the appeal one more substantial question of law was formulated and that was about liability of the insurance company to pay interest on the compensation amount. No argument was advanced on this point and it is settled law that the compensation amount includes the interest which is required to be paid by the owner. It is settled law that the insurance company is liable to pay interest also.

4) The claim was filed by the parents of the deceased. Mother had given her age as 50 years when the father has given his age as 70 years. In the claim the age of the deceased was given as 26 years and his monthly income was shown as Rs.2500/-. It was contended that the deceased was getting daily allowance of Rs.20/-. He was working as driver of truck of original respondent No.1, owner of the truck. It is not disputed that the deceased came under the wheels of the truck and he died in the accident. The vehicle turned turtle when the deceased was driving the truck.

5) Only the insurance company contested the matter by filing written statement. It was contended that the claim was highly exaggerated and there was specific denial of the age of the deceased. The evidence of the parents is in accordance with the aforesaid contentions. Though in the examination-in-chief father mentioned the age of deceased as 45 years, he was unmarried and he was maintaining the parents, the Commissioner has held that the parents are illiterate and so not much weight can be given to the aforesaid evidence. There is record like report given by the colleague of the deceased in which he had given the age of the deceased as 26 years. Post mortem was performed on the dead body and on external examination doctor had formed opinion that the age of the deceased was 26 years.

6) The learned counsel for the insurance company appellant placed reliance on two reported cases - (1) **2004 LAB IC 1156 (Divisional Manager, United India Insurance Co. Ltd. v. Latula)** (Orissa High Court); and, (2) **2004 III CLR 641 (Rambhaben v. Bachubhai Sukhabhai)** (Bombay High Court). In the first case the Orissa High

Court had observed that age of the deceased at the time of death cannot be ascertained on the basis of age mentioned in the post mortem report when more reliable evidence like statement of the wife of the deceased is available. In view of the facts of that case such observations were made. It cannot be said that the age in post mortem is mentioned only on the basis of information supplied to the doctor. Column No.17 in that regard shows that it is opinion formed on the basis of external examination. There can be plus minus of one or two years but it cannot be said that the age mentioned in the post mortem report is solely on the basis of information supplied. The age was not informed by the parents but by the colleague of the deceased in the report given to the police. The Bombay High Court has not made any specific observations with regard to the age which is mentioned in post mortem report and the observations are with regard to the contents of the accident report.

7) When the evidence was given by the claimant that monthly income of the deceased was of Rs.2500, nothing in rebuttal was given. The Commissioner

presumed that the monthly income was Rs.2500/-. The procedure given in section 4 of the WC Act for calculation of compensation is followed by the Commissioner and the compensation of Rs.2,69,100/- is warded. No error is shown in the calculation made by the Commissioner. The amount of Rs.2,15,280/- was claimed by the parents but the amount which needs to be granted under the provisions of the WC Act is given by the Commissioner and so no error is committed by the Commissioner on the point of quantum also. This Court sees no reason to interfere in the decision given by the Commissioner. Though aforesaid substantial questions of law were formulated it can be said that the findings of the Commissioner are on the basis of evidence given on facts and no substantial question of law as such is involved in the matter.

8) So, the points are answered against the appellant and the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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