

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

First Appeal No. 373 of 2000

* Janardhan s/o Bhalchandra Chaudhari,
Since deceased, through his legal
representatives:

- 1) Indubai w/o Janardhan Chaudhari,
Age 35 years,
Occupation : Household work
R/o Hanuman Nagar,
Near Motha Maruti Temple,
Near Dr. Sushant P. Supe Hospital,
Bhusawal, Taluka Bhusawal,
District Jalgaon.
- 2) Manoj s/o Janardhan Chaudhari,
Age 21 years.
Occupation: Education
R/o As above.
- 3) Yogita d/o Janardhan Chaudhari,
Age 19 years,
Occupation: Education,
R/o As above.
- 4) Soni d/o Janardhan Chaudhari,
Age 18 years,
Occupation: Education,
R/o As above.

.. Appellants.

Versus

* The Union of India, Owning
and Representing The
Central Railway New Delhi
Through :

- 1) The General Manager,
Central Railway, Bombay (V.T.)

- 2) The Divisional Railway Manager,
Central Railway, Bhusawal,
District Jalgaon.

.. Respondents.

Shri. R.M. Deshmukh, Advocate, for appellants.

Shri. M.N. Nawandar, Advocate, for the respondents.

CORAM: T.V. NALAWADE, J.

DATE : 10th FEBRUARY 2016

JUDGMENT:

1) The appeal is filed by the original claimant of W.C. Application No.33 of 1995 which was pending before the Commissioner appointed under the Workmen's Compensation Act at Jalgaon. In respect of injuries sustained by the claimant, the Commissioner granted compensation of Rs.10000/- as approximate compensation. Both the sides are heard.

2) It appears that no substantial question of law as such was formulated when the appeal was admitted. In view of the contentions made in the appeal and the purpose behind the appeal, this Court holds that following substantial questions of law need to be formulated and decided in the present matter.

(I) whether the approach of the Commissioner of giving approximate compensation when the claimant had sustained schedule injury was proper ?

(II) whether the claimant is entitled to get compensation as provided under the WC Act ?

3) Before considering the contentions of the appellant, claimant and the reasoning given by the Commissioner, it needs to be kept in mind that the Central Railway has not challenged the decision of the Commissioner. It is the case of the claimant Janardhan that he was working as casual labourer, as a gang-man, and he met with accident at Bhusawal on 4-7-1986. His right hand was amputated during treatment. It appears that he was required to file proceeding before the Central Administrative Tribunal and then railway gave him some alternate job. After filing of the present proceeding he died and the matter was prosecuted by the legal representatives of Janardhan.

4) The claimant examined himself to substantiate his case. He gave evidence that he lost his right hand in the accident and at that time he was present at the railway station for discharging his official duties. His last

wage was Rs.850/- per month. He relied on the permanent disability certificate showing that due to amputation of right hand there is permanent disability to the extent of 90%. This record was not disputed by the railway. Railway examined one employee but the employee was examined only to prove that the deceased was a temporary employee and as per the record he was on leave from 12-6-1986 to 3-7-1986. The accident took place on 4-7-1986. It appears that wages in respect of this period were paid to the claimant subsequently in view of the orders made by the C.A.T. Thus there is no force in the defence taken by the railway that the claimant was not in the employment or that the accident did not take place during the course of employment. In any case the decision is not challenged by the railway on this point.

5) The Commissioner refused to give compensation as per the provision of the WC Act by observing that the claimant may loose job if it is held that there is total disablement, loss of earning capacity. This approach was not correct. The claimant had lost his right hand due to the accident and the permanent disability was 90%. He

was kept in service and so the Commissioner could have safely calculated the compensation as per the WC Act. He was aged 36 years and if the proper procedure under section 4 of the Act is followed, the compensation amount comes to Rs.89,249/-. This Court holds that the claimant is entitled to receive such compensation with interest at the rate of 9% per annum.

6) In the result, both the points are answered accordingly and following order is made :-

7) The appeal is allowed. The decision of the Commissioner appointed under the WC Act is modified to make the compensation as Rs.89,249/- (Rupees Eighty Nine Thousand Two Hundred and Forty Nine Only). Interest at the rate of 9% is allowed as granted by the Commissioner. Amount is to be deposited after deducting the amount already paid as compensation under the order of the Commissioner. The amount is to be disbursed and paid to the present appellant Indubai, widow of the deceased.

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

rs1