

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

FIRST APPEAL NO.604 OF 2007

Mainoddin S/o Mahetab Shaikh
Aged – Major, Occupation – Service,
R/o Sai Road, Latur.

... Appellant
(Orig. Claimant)

Versus

Rajasaheb S/o Sheshrao Godse (Patil)
Aged – 30 years, Occupation – Business,
Resident of – Adarsh Colony,
Latur.

... Respondent
(Orig. Employer)

...

Mrs. M.A. Kulkarni, Advocate for Appellants

...

CORAM: P.R.BORA, J.

Date of reserving the judgment : 07th April, 2016
Date of pronouncing the judgment: 02nd May, 2016

...

JUDGMENT :

1) Heard the learned Counsel for the appellant. None appears for the Respondent.

2) The original Claimant had filed the present appeal, seeking enhancement in the amount of compensation awarded to him by the Labour Court and Commissioner for Workemen's Compensation, Latur (herein after referred to as 'Commissioner') in

W.C.(D) No.20/1996 decided on 11.07.1997.

3) The claimant (hereinafter referred to as the employee) had met with an accident during the course of his employment with the Respondent, his left thumb was crushed. The Respondent (hereinafter referred to as the employer) at his own deposited an amount of Rs.17,500/- as amount of compensation payable to the employee in the Court of Commissioner for Workmen's Compensation at Latur. It was contended by the employer that, he was already paid Rs.10,000/- to the employee and deducting the said amount, he has desposited the amount of Rs.17,500/-. On service of notice from the Court of Workmen's Compensation Commissioner, the employee appeared in the matter and filed his say. He disputed the amount amount of compensation deposited by the employer. He claimed enhancement in the compensation amount to the tune of Rs. 1,18,326/- with penalty and interest.

4) It was the contention of the employee

before the Commissioner that, he was receiving the salary of Rs.2,000/- per month and that his age was 35 years. In order to prove his wages, the employee himself deposed before the Commissioner and also examined co-worker. The employer also deposed before the Commissioner. The learned Commissioner after having considered the oral and documentary evidence brought before it, held the employee entitled for the total compensation of Rs.41438.25 ps. Deducting the amount paid by the employer to the tune of Rs.27,500/-, the learned Commissioner passed the order directing the employer to pay employee the amount of Rs.13,938/-

5) Smt. M.A. Kulkarni, the learned Counsel appearing for the appellant – employee submitted that, the Commissioner has erred in determining the amount of compensation. Learned Counsel submitted that, inabsence of any documentary evidence on record as regards to the wages of the employee, the Commissioner must have determined the

compensation on the basis of minimum wages. Learned Counsel submitted that, at the relevant time, the minimum wages for a skilled workmen were Rs. 1,170/- per month, and accordingly the compensation ought to have been awarded by the Commissioner. Learned Counsel further submitted that, an amount of Rs.10,000/- was paid by the employer to the employee for medical expenses and was not liable to be deducted from the total amount of compensation. Learned Counsel, therefore, prayed for enhancement of the amount of the compensation and the modification of the award to that extent.

6) On perusal of the impugned Judgment, it is revealed that, the Commissioner has erred in determining the compensation by holding the monthly wages of the employee to the tune of Rs. 750/- per month. Though it was the case of the employee that, he was drawing the wages to the tune of Rs.2,000/- per month, he could not bring on record sufficient evidence to prove his wages. However, it

has come on record in the cross-examination of the employer that, the appellant – employee was engaged on daily wages at the rate of Rs.35/- per day, this evidence ought to have been considered by the learned Commissioner. The learned Commissioner ought to have held the monthly wages of the employee to the tune of Rs.910/-, presuming that, in a month, the work was being provided to the employee for 26 days. The Tribunal has further erred in deducting the amount of Rs.10,000/- which was said to have been paid by the employer out of the Court to the employee, said amount was not liable to be deducted while determining the compensation.

7) It is not in dispute that, the appellant – employee had incurred the disability to the extent of 50%. There is further no dispute that, age of the employee at the relevant time was 40 years. Thus, the relevant factor would be 184.17. Considering the provisions of amended Workmen's Compensation Act, 60% of the monthly wages will have to be multiplied

by the relevant factor so as to determine the amount of payable compensation. Holding the monthly wages of the appellant – employee to the tune of Rs.910/- ($35 \times 26 = 910$), 60% of it comes to Rs.546/-. If the said amount is multiplied by the relevant factor, the compensation amount comes to Rs.1,00,556.82 ($546 \times 184.17 = 1,00,556.82$). Having regard to the percentage of disability to the extent of 50%, the employee is entitled to receive 50% of the said amount, which comes to Rs.50,278/-. I hold the appellant – employee entitled for to receive the said compensation. As stated earlier, only the amount of Rs.17,500/- would be liable to be deducted from the said amount. Deducting the said amount, the respondent – employer is liable to pay the balance amount of Rs.32,778/- ($50,278 - 17,500 = 32,778$) to the employee.

8) In so far as award of interest is concerned, the appellant claimant is certainly not entitled for the interest from the date of accident or from the date of

filing of an application by him before the Commissioner, for the reason that, more than nine years delay has been committed by the claimant in filing the present appeal. The claimant is not entitled to receive any interest of the said period. The claimant is however entitled to receive the interest from the date of admission of the present appeal. In the result, the following order:

ORDER

- a) The appellant is held entitled for the total compensation of Rs.50,278/-.
- b) Deducting the amount of Rs.17,500/- already paid, the respondent shall pay balance amount of Rs.32,778/- to the appellant claimant with the interest thereon at the rate of 9% per annum from the date of admission of the present appeal i.e. 16.06.2007 till its actual realization.
- c) The appeal stands partly allowed in the aforesaid terms.

(P.R.Bora)
Judge