IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2201 OF 2015
WITH
CIVIL APPLICATION NO. 11797 OF 2013

M/s. National Insurance Co. Ltd. .. Appellant

Versus

Govardhan Baburao Gund & ors. .. Respondents

Mr.V.N. Upadhye, Advocate for the appellant.
Mr.P.S. Chavan, Advocate for respondent Nos.1 & 2.

CORAM : A.V.NIRGUDE, J
DATE : 25.08.2016

P.C. :-

1. This appeal challenges judgment and award dated 17.06.2013 passed by the learned Commissioner for Workmen's Compensation in W.C. Application No. 31 of 2011.

2. The facts leading to this application in short care as under :-

3. This is insurance company's appeal, who was respondent No.2 in the lower Court. I will refer to the parties by their designation in the lower Court. The applicants/claimants are parents of one Mahesh, who was working as a driver on a truck and who died in motor

accident while performing his duty on 19.06.2010. It was case of the applicants/claimants that Mahesh's salary was Rs.4000/- per month and he was getting daily Bhatta of Rs.100/-. It so happened that after the accident, respondent No.1-employer failed to deposit provisional compensation as expected under section 4 of the Workmen's Compensation Act, 1923 (for short "Said Act"). The claimants, therefore, claimed penalty to the extent of 50% of the amount of compensation as against the employer as well as insurance company.

4. Learned Counsel for the appellant/insurance company raised two points. He said that the learned Ex-Officio Commissioner committed error in holding that Mahesh's monthly salary was Rs.7000/-. The second contention is that assuming the employer committed default in depositing undisputed amount, penalty should be imposed only on employer and the insurance company is not liable to cover such risk.

5. First question that arises for my consideration is - what would be the monthly wages of the deceased? Indeed the claimants came with a case that monthly wages of the deceased was Rs.4000/-. In addition to it, he was getting Rs.100/- per day and therefore they thought that Mahesh would get Rs.7000/- per month as salary. Learned

Counsel for the appellant rightly contended that the daily allowance cannot be included as wages as defined under section 2(n) of the said Act. Section 2(m) of said Act reads as under :-

> "2(m) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment."

6. Daily wages could be the sum paid to deceased to cover daily expenses incurred by him due to nature of his outdoor employment. In other words, as a truck driver, on highways he would not get food from his house and would constrained to spend money on his food. To cover up such expenses, daily allowance was paid to him. Apparently, daily allowance cannot be said to be wages.

7. Nonetheless, learned Ex-Officio Commissioner rightly placed reliance on Notification No. SO 1258(E) dated 31.05.2008 issued by the Central Government fixing monthly wages of Rs. 8000/- for calculations of compensation under Section 4 of the Act. I agree with his view that having regard to the higher limit of Rs.8000/-, even if the claimants claimed that Mahesh was

getting Rs.5000/- salary per month and certain amount as daily allowance, total would still not be more than Rs.8000/-. The amount of Rs.7000/- per month is sum of all the allowance and wages payable to the deceased. Since this amount is less than Rs.8000/-, learned Ex-Officio Commissioner rightly ignored the submissions based on section 2(m) of the Act. I am also inclined to ignore it. Judicial note must also be taken of the fact that on one hand the legislature put up limit of Rs.8000/- per month. On the other hand, employers for exploiting employees pay them wages even less than Rs.8000/-. In case, wages are more than Rs.8000/- per month, for the purpose of compensation, Rs. 8000/- would be used for calculating compensation. I am, therefore, not inclined to disturb the findings recorded by the Lower Court that monthly wages of the deceased was Rs.7000/-.

8. The second point that arises for my consideration is penalty payable under section 4-A of the Act is the insurance company's liability. This question arose before the Supreme Court in the case of **Ved Prakash Garg and Ors. Vs. Premi Devi & Ors., 1998(1)T.A.C.215(S.C.)**. The Supreme Court held that the amount of penalty and interest on it is employer's liability and not of insurance company.

9. The appeal, therefore, should partly succeed. Hence, the first appeal is partly allowed. The award is modified as under :-

10. Original respondent Nos.1 & 2 shall pay compensation of Rs.7,67,375/- (Rupees Seven Lakhs Sixty Seven Thousand Three Hundred Seventy Five) along with interest at the rate of 7.5% p.a. from 17.06.2011 till the same is deposited in the Court. Original respondent No.1 shall in addition pay penalty of Rs.3,83,637/- with interest at the rate of 7.5% p.a. The excess amount deposited by the appellant would be refunded to them.

11. In view of disposal of the First Appeal, connected Civil Application for stay does not survive and stands disposed of.

[A.V.NIRGUDE,J.]