

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

FIRST APPEAL NO.4034 OF 2016

The General Manager,
Bharat Sanchar Nigam Limited,
Dhule, Tq. Mohadi Upnagar,
Dhule.

**..APPELLANT
(Ori. Opponent)**

VERSUS

1. Smt. Latabai Ramkurshna
Nikam (Patil)
Age: 47 years,
Occ.: Household,

2. Hemraj Ramkrushna
Nikam (Patil),
Age: 22 years,
Occ: Education,

Both R/o. Manjare,
Tq. Malegaon, Dist. Nashik

**..RESPONDENTS
(Ori. Claimants)**

Smt. Manjusha A. Deshpande, Advocate for appellant.
Shri. Vivek Bhavthankar, Advocate for Respondent
Nos.1 & 2.

WITH

FIRST APPEAL STAMP NO.27448 OF 2015

1. Smt. Latabai Ramkurshna
Nikam (Patil)
Age: 49 years,
Occ.: HH,
2. Hemraj Ramkrushna
Nikam (Patil),
Age: 24 years,
Occ: Student,

Both R/o. Manjare,
Tq. Malegaon, Dist. Nashik

VERSUS

**...Appellants
(Ori.Applicants)**

The General Manager,
Bharat Sanchar Nigam Limited,
Dhule, Tq. Mohadi Upnagar,
Dhule.

..RESPONDENT

Shri. V.V. Bhavthankar, Advocate for appellants.
Smt. M.A. Deshpande, Advocate, for Respondent Sole.

CORAM: P.R.BORA, J.

Date of reserving the judgment: 12/6/2017

Date of pronouncing the judgment: 25/7/2017

JUDGMENT:

1. The judgment and award passed by the Commissioner for Employees Compensation at Dhule on 26th of June, 2015, in Application (ECA) No.91/2013, is challenged in the present appeal by the respondent therein.

2. The present respondents had filed the aforesaid application under Section 10 of the Employees

Compensation Act, 1923 (hereinafter referred to as the 'Act of 1923'), seeking compensation of Rs.11,13,040/- on account of death of Ramkrishna Shravan Nikam (Patil), husband of respondent no.1 and father of respondent no.2, alleging the same to have been caused during the course of his employment. Deceased Ramkrishna was serving with the appellant as a Telephone Mechanic. On 21st of May, 2012, when deceased Ramkrishna was checking the defect in telephone wire of telephone no.247936 and for that purpose had climbed on the telephone pole, received electric shock and fell on the ground. By the time he was taken to the Civil Hospital, Dhule, he succumbed to the injuries caused to him in the alleged accident.

3. Deceased Ramkrishna was 54 years old at the time of his death and was drawing monthly salary of Rs.26,380/-.

4. The application filed by the respondents was resisted by the appellant on several grounds. The appellant had denied that deceased Ramkrishna was their

employee. An objection was also raised that since the respondents were awarded full pension after death of Ramkrishna and accordingly respondent no.1 i.e. widow of deceased Ramkrishna was getting the pension at the rate of Rs.14,888/- per month, the respondents i.e. original claimants were not entitled for any compensation. One more objection was raised that Maharashtra State Electricity Distribution Company though was a necessary party and since it was not impleaded as a respondent, the claim petition was prayed to be dismissed on that ground.

5. Learned Commissioner, after having assessed the oral as well as the documentary evidence on record, rejected the objections raised on behalf of the appellant and held the respondents entitled to the compensation of Rs.5,70,720/- with interest thereon at the rate of 12 per cent per annum. Aggrieved thereby, the present appeal has been filed by the original respondent.

6. Smt. M.A.Deshpande, learned Counsel appearing for the appellant, assailed the impugned judgment and award mainly on the ground that the

learned Commissioner has failed in considering that the application itself was not maintainable since the claimants had already received a huge amount towards compensation by way of retiral benefits concerning to deceased Ramkrishna. Learned Counsel further submitted that the widow of deceased Ramkrishna i.e. respondent no.1 is being paid double the pension than that of her entitlement and, as such, no further compensation was liable to be paid to her. Learned Counsel further submitted that since additional amount of Rs.13,70,470/- has also been paid by the present appellant to the claimants because of untimely death of deceased Ramkrishna during the course of employment, nothing more was to be paid to the claimant under the Employees Compensation Act. Learned Counsel, therefore, prayed for setting aside the judgment and award impugned in the present appeal.

7. Shri Bhavthankar, learned Counsel appearing for the respondents, supported the impugned judgment and award. Learned Counsel submitted that the pecuniary advantages received to the claimants from other sources

by reason of death of deceased Ramkrishna cannot be deducted while determining the amount of compensation under the provisions of the Employees Compensation Act. Learned Counsel, therefore, prayed for rejecting the appeal.

8. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the parties. As I have noted earlier, the main ground raised by the appellant in the present appeal is that when the widow of the deceased is getting the full pension, nothing more was liable to be paid by way of compensation under the provisions of the Employees Compensation Act. The objection is liable to be rejected at the threshold in view of the provisions under the Employees Compensation Act. Section 3 of the Act mandates that the employer shall be liable to pay the compensation in accordance with the provisions of Chapter II of the Act if personal injury is caused to an employee arising out of and in the course of his employment. The entitlement to the aforesaid compensation cannot be equated with the right to receive pension.

9. Family pension is in fact a right of the family

member of an employee after the death of the said employee; whether he suffers death during the course of his employment, or after attaining the age of superannuation. In the circumstances, merely because the widow of deceased Ramkrishna is receiving family pension, it cannot be accepted that no amount of compensation as determined under the Employees Compensation Act is liable to be paid to her. The objection raised by the appellant is devoid of any substance and deserves to be rejected.

10. The law is further well settled that any amount paid to the legal heirs of the deceased as ex gratia compensation, otherwise than in accordance with the provisions of the Act, does not fall under 'compensation' within the meaning of the Employees Compensation Act as provided under Section 13 of the said Act. In the circumstances, though it is the contention of the appellant that certain amount of compensation is already paid to the widow of the deceased, the same will not operate as a bar for awarding compensation under Employees' Compensation Act and the amount so paid if any, would

not be liable to be deducted from the compensation to be computed under the provisions of the Employees Compensation Act. It does not appear to me that the Workmen's Compensation Commissioner has committed any error in awarding compensation to the respondents herein i.e. the original claimants. I see no merit in the appeal so filed.

11. The claimants have also filed an appeal on the ground that the Commissioner has not awarded penalty against the original respondent. I am, however, not at all convinced with the objection so raised by the claimants, in view of the fact that the respondent had shown all its bona fides in making ex gratia payment of sumptuous amount to the claimants and in processing the family pension papers of the claimants. As has come on record the widow of the deceased had started receiving the amount of family pension. I find substance in the submission made by Smt. Deshpande, learned Counsel appearing for the respondents that the respondents were bona fide believing that when they had paid a sumptuous amount towards ex gratia payment for untimely death of Ramkrishna, they

may not be liable to pay any more amount under the provisions of the Employees Compensation Act.

12. The penalty clause is for the employers who intentionally avoid to make the payment of compensation. However, this is not the case in the present matter. I, therefore, do not see any merit in the appeal so filed by the original claimants. The Appeal preferred by the claimants being devoid of substance deserves to be dismissed.

13. Hence, the following order:

ORDER

1. The First Appeal No.4034 of 2016 as well as First Appeal Stamp No.27448 of 2015 are dismissed without any order as to the costs.

2. The amount, if any, deposited in this Court, by the appellant in F.A.No.4034 of 2016 be transmitted to the Court of Commissioner for Employees Compensation and Judge, Labour Court, Dhule, so as to facilitate the claimants to withdraw the same.

3. Pending Civil Applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

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