

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

FIRST APPEAL NO. 3149 OF 2016

SHITARAM BHIKAJI SONAWANE AND ANOTHER
VERSUS
DNYANDEV BHAGWANT AHER AND ANOTHER

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Advocate for Appellants : Mr Dhage Hemant U
Advocate for Respondent no.2 : Mr Kanade Arun G.
Respondent no.1 served absent.

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CORAM : V.K. JADHAV, J.

Dated: February 06, 2017

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PER COURT :-

1. Heard finally with the consent of the parties, at admission stage.
2. Being aggrieved by the judgment and award passed by the Commissioner for Workmen's for Compensation, and Judge First Labour Court, Ahmedagar Ahmednagar dated 5.3.2014 in W.C. No.101/2011, the original applicants preferred this appeal to the extent of quantum.
3. It is not disputed that, deceased Ravindra Sitaram Sonawane met with an accidental death on 13.4.2011 while in the employment and during the course of his

employment with opponent no.1, on his tanker bearing registration No,MH-17/A-5779, as a driver.

4. The learned counsel for the appellants claimant submits that the applicant no.2 has deposed before the Commissioner that her deceased son was getting Rs.6,000/- p.m. as salary and daily allowance of Rs.100/-. Even then, the learned Commissioner has considered the monthly salary of deceased Ravindra at Rs.4,000/- p.m. on the basis of oral evidence given by the respondent owner and further ignored the claim for daily allowance. Learned counsel submits that, so far as the amendment in the Act in respect of section 4(1) and relevant notification dated 31.5.2010 is concerned, admittedly, the accident had taken place on 13.4.2011 and as such the Commissioner should have considered the salaried income as deposed by the applicant no.2 including daily allowance as stated and awarded the compensation. However, the learned Commissioner has considered the evidence of respondent owner without any supporting documents and erroneously held that deceased Ravindra was getting Rs.4,000/- p.m. as

salary. Though learned commissioner has accepted that respondent owner has not stated anything about daily allowance, the learned Commissioner has ignored said aspect on the ground that the tanker was used in the local area. Learned counsel submits that, admittedly, said tanker was being used for providing (spand wash) molasses to the farmers in the surrounding villages and thus, respondent owner was giving Rs.100/- per day as daily allowance to deceased Ravindra on that count. Learned counsel for the appellant claimant in the alternate submits that even though the salary of deceased Ravindra is considered at Rs.4,000/- p.m, his daily allowance needs to be considered. Learned counsel has placed his reliance on a judgment in case of Varsha Santosh Birajdar and others Vs. Sujata Ashok Pokharkar and another reported in 2016 (4) Mh.L.J. 213.

5. Learned counsel for respondent insurer submits that, the appellants have not produced any documentary evidence in support of their contentions about salaried income of deceased Ravindra. Learned Commissioner has rightly considered oral evidence of

the respondent owner. Learned counsel submits that the Commissioner has rightly observed that said tanker was being used in the local area and, therefore, there was no question of paying any daily allowance to deceased Ravindra. On the basis of the evidence adduced by the parties, the learned Commissioner has observed that salary of deceased Ravindra was Rs.4,000/-p.m. and nothing more than that. Consequently, the Commissioner has rightly determined the compensation as per the provisions of section 4(1) with the relevant factor as per the schedule IV of the Employees Compensation Act. Learned counsel submits that, in the case cited above, issue is altogether different and said case cannot be made applicable to the facts and circumstances of the present case.

6. on careful perusal of the evidence led by the parties and impugned judgment and award passed by the Commissioner, I do not find any fault in the observations made by the learned Commissioner about salary of deceased Ravindra at Rs.4,000/- p.m. Respondent owner is the best person to depose about

salary being paid to deceased and weightage is required to be given to his evidence, particularly, on the backdrop that vehicle involved in the accident is insured with respondent no.2 and, as such, respondent no.1 owner is not personally liable to pay any compensation. However, in my opinion, the learned Commissioner has not given any weightage to the evidence of the applicant on the point of daily allowance being paid to deceased Ravindra. Respondent-owner has not denied in his evidence that daily allowance was being paid to deceased Ravindra. Though, there is pleadings that tanker was in use in the local area, admittedly, it was not used within town limits, but tanker was being used for supplying molasses to the farmers in the surrounding villages. Learned counsel submits that learned Commissioner has committed a mistake in ignoring the evidence of applicant in respect of the daily allowance particularly on the backdrop that respondent owner has not specifically denied about it. If the said tanker was being used for providing molasses to the farmers in the surrounding villages, certainly daily allowance was being paid as claimed by his dependents.

In view of the above, as per the evidence led by the respondent owner, if, the said tanker was being used for 25 days in a month for supplying the said product to the farmers in the surrounding villages, addition of RS.2,500/- in the monthly salary of deceased Ravindra is required to be considered. In view of this, monthly salary of deceased Ravindra is considered at Rs.6,500/- for the purpose of determination of compensation. There is no dispute about the date of birth of the deceased and his age as on the date of accident. Thus, relevant factor would come to 205.1995. Thus, respondents applicants are entitled to Rs.6,69,338/-.

7. In view of the above, the judgment and award passed by the commissioner need to be modified. Hence, following order.

O R D E R

- I. First appeal is hereby partly allowed with proportionate costs.
- II. The Judgment and Award passed by the First Labour Court, Ahmednagar dated 5.3.2014 in W.C.No.101/2011 is hereby modified in the

following manner.

The opponent nos. 1 and 2 shall jointly and severally pay compensation of Rs.6,69,338/- (Rs.Six Lacs Sixty Nine Thousand Three Hundred Thirty Eight Only) to the applicants with interests @ 12% p.a. from the date of accident, i.e. 13.4.2011, till realization of the entire amount.

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up as per the above modifications.

V. First appeal is accordingly disposed of.

(V.K. JADHAV, J.)

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