

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

FIRST APPEAL NO.2425 OF 2008

1. Smt. Mangalabai Ananda Patil
Age : 35 years, Occu : Household
2. Chi. Shashikant Ananda Patil
Age : 17 years, Occu : Education,
3. Chi. Ganesh Ananda Patil
Age : 16 years, Occu : Education,
4. Ku. Bharati Ananda Patil
Age : 14 years, Occu : Education
5. Omkar Rambhaji Patil (Dead)
6. Sau. Mandabai Omkar Patil (Dead)

Applicant No.1 is for herself and the
Natural Guardian of No.2 to 4
All are R/o. Shinde Galli, Parola,
Taluka – Parola, Dist. Jalgaon

.. Appellants
(Orig. Claimants)

Versus

1. Shri Avinash Bhikanrao Patil
Age : Major, Occu : Business
R/o. Lohar Galli, Parola, Tal. Parola,
Dist. Jalgaon
2. The National Insurance Company Ltd.
Through Divisional Manager,
Hajari Chambars, Station Road, Aurangabad.
Branch Office – 266, Baliram Peth, Jalgaon

.. Opponents
(Orig. Respondents)

.....

Advocate for Appellants : Shri M.M. Bhokarikar
Respondent No.1 – Served.
Advocate for Respondent No.2 : Shri V.N. Upadhye

.....

CORAM : P.R. BORA, J.
Dated: 26.10.2018

ORAL JUDGMENT :

1. The original claimants in WCA No.69 of 2003 decided by the Workmen's Compensation Commissioner at Jalgaon on 30.08.2007 have preferred the present appeal challenging the Award passed in the said application and have thereby sought enhancement in the amount of compensation awarded by the Commissioner.

2. The claimants had filed the aforesaid application being legal heirs of deceased Ananda Patil claiming that Ananda died in a vehicular accident happened out of and during the course of his employment as a driver with respondent no.1. The accident was stated to have happened on 28.12.2002. Age of deceased Ananda on the date of accident was stated as 36 years. It was the contention of the appellants that, deceased Ananda used to earn Rs.4,000/- per month by way of his salary and also used to receive *Bhatta* at the rate of Rs.60/- per day.

3. The application was resisted by the Insurance company on various grounds.

4. In order to substantiate the contentions raised in the application, claimant no.1 Mangalabai deposed before the Court. The claimants had also filed on record the necessary police papers pertaining to the criminal case in relation to the accident in question. The claimants had also filed on record the copy of the notice, which was issued by them to the employer and the Insurance company before filing of the claim application. The claimants had also placed on record the salary certificate of deceased Ananda as well as the driving licence and school leaving certificate of the deceased. Respondent No.1 also testified before the Commissioner. No oral evidence was adduced on behalf of the Insurance Company.

5. After having assessed the oral as well as the documentary evidence brought on record before him, the learned Commissioner held the claimants entitled for the total compensation of Rs.1,36,900/- and directed the respondents to

jointly or severally pay the aforesaid amount with interest thereon at the rate of 6% per annum from the date of filing of the application till its realization. Aggrieved by, the claimants have preferred the present appeal.

6. Shri Bhokarikar, learned Counsel for the appellants – claimants assailed the impugned Judgment and Award mainly on two grounds. First that, the learned Commissioner despite there being evidence on record evidencing the salary of deceased Ananda to the tune of Rs.4,000/-, held the salary of deceased at the rate of Rs.2,000/- per month, and second that the learned Commissioner has erred in awarding the interest at the rate of Rs.6% per annum, where the statute provides for Award of the interest at the rate of 12%.

7. The learned Counsel taking me through the evidence of respondent no.1 namely Avinash Bhikanrao Patil submitted that, the said witness in his testimony before the learned Commissioner has deposed that, he used to pay salary of Rs.4,000/- per month to deceased Ananda and also used to pay him Rs.60/- per day as *bhatta*. The learned Counsel submitted

that, through the evidence of said Avinash Patil, the salary certificate issued by him was duly proved and came to be marked as Exh U-40. The learned Counsel submitted that, nothing has come on record in the evidence of said Avinash Patil so as to disbelieve his version as about the salary of deceased Ananda. The learned Counsel submitted that, amount of *bhatta* forms part of the wages and considering the amount of *bhatta* monthly income of deceased Ananda was Rs.5800/- per month. The learned Counsel submitted that, in the circumstances, the learned Commissioner must have determined the amount of compensation by holding the salary income of deceased Ananda to the tune of Rs.5800/- per month. Bringing to my notice the relevant provisions as about the award of interest, the learned Counsel submitted that, the learned Commissioner could not have awarded the interest less than 12% per annum. The learned Counsel, therefore, prayed for suitable modifications in the impugned Judgment and Award and to enhance the amount of compensation accordingly.

8. Shri Upadhye, learned Counsel appearing for the

respondent – Insurance Company resisted the submissions made on behalf of the appellants – claimants. The learned Counsel submitted that, at the relevant time i.e. on the date of accident, the maximum wages to be considered for payment of compensation under the provisions of Employee's Compensation Act were Rs.2000/-. In the circumstances, according to the learned Counsel, the learned Commissioner has not committed any error in holding the income of deceased Ananda to the tune of Rs.2000/-, while assessing the amount of compensation payable to the legal heirs of the said deceased. The learned Counsel further submitted that, the appellants – claimants cannot file an appeal under Section 30 of the Act for non-grant of interest by the Commissioner at the rate of 12% per annum. The learned Counsel, therefore, prayed for dismissal of the appeal.

9. I have given due consideration to the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned Judgment and the evidence on record. I would first like to deal with the objection

raised by the appellants as about the amount of compensation determined by the learned Commissioner holding the income of deceased Ananda to the tune of Rs.2,000/- per month. It was the case of the claimants that, deceased Ananda was earning monthly salary to the tune of Rs.4,000/- and also used to receive daily *bhatta* at the rate of Rs.60/- per day. According to the claimants, the total income of deceased Ananda was thus Rs.5,800/- per month. Respondent No.1 – Avinash Bhikanrao Patil, the employer of deceased Ananda, in his testimony before the learned Commissioner has fully corroborated the facts as are averred in the petition and as were deposed to by claimant no.1 - Mangalabai in her evidence before the Commissioner. Respondent No.1 deposed that, he used to pay Rs.4,000/- to deceased Ananda by way of his monthly salary and also used to pay him Rs.60/- by way of daily *bhatta*.

10. The learned Counsel for the respondent – Insurance Company had invited my attention to the cross-examination of Respondent No.1 Avinash, wherein he has stated his monthly income to the tune of Rs.5,000/- to Rs.6,000/-. According to the

learned Counsel, it was improbable that, a person earning income of Rs.6,000/- per month would be able to pay the salary to the tune of Rs.4000/- and daily *bhatta* to the tune of Rs.60/- per day to a driver employed by him. The learned Commissioner has also expressed the similar opinion and on that count has declined to rely upon the testimony of respondent No.1 Avinash. The learned Commissioner has noted that, it was improbable that, a person earning an income of Rs.6000/- per month would pay so much of salary to the tune of Rs.4000/- to his driver. The learned Commissioner has, therefore, held the salary of deceased Ananda to the tune of Rs.2,000/- per month.

11. Insofar as the amount of *Bhatta* is concerned, it was the contention of the learned Counsel appearing for the claimants that, it forms the part of wages. In order to support the said contention, the learned Counsel had relied upon few Judgments, to which, I may refer hereinafter, if so required.

12. As against it, it was the contention of the learned Counsel for the Insurance Company that, daily *Bhatta* would not

form the part of the wages. The learned Counsel also relied upon some authorities, to which also, I may refer hereinafter, if so required.

13. It was also the contention of Shri Upadhye, learned Counsel appearing for the Respondent – Insurance Company that, even otherwise the learned Commissioner could not have held the income of deceased Ananda more than Rs.2000/- per month for the purpose of determining the amount of compensation payable to his legal heirs under the provisions of the Act in view of the ceiling provided vide Explanation II to Section 4 (1)(b) of the Act as was prevailing at the relevant time. The contention so raised by Shri Upadhye, however, cannot be accepted. The limit of Rs.2000/- prescribed in explanation-II as mentioned herein above, was enhanced to Rs.4,000/- vide The Workmen's Compensation (Amendment) Act of 2000 brought in effect from 08.12.2000. It is thus evident that, upper salary limit liable to be considered for determination of the amount of compensation was Rs.4000/- per month on the date of alleged accident.

14. The next question arises whether the claimants have proved the income of deceased Ananda to Rs.4000/- per month and whether they have further proved that, he was receiving daily *Bhatta* to the tune of Rs.60/- per day. As noted herein above, the claimants were relying upon the testimony of respondent no.1 - Avinash Patil, the employer of deceased Ananda, to prove the salary income of deceased Ananda. The learned Commissioner has not believed the evidence of respondent no.1 Avinash Patil for the reason that, Avinash Patil stated his own income to the tune of Rs.6000/- per month. It does not appear to me that, the learned Commissioner was completely wrong in not believing the testimony of employer Avinash Patil as about the salary of deceased Ananda to the tune of Rs.4000/- per month. However, it has been sufficiently established by the claimants that, deceased Ananda was working as a driver. In the circumstances, I see no difficulty in holding the income of deceased Ananda to the tune of Rs.3000/- per month by way of his monthly salary. The next question arises whether the amount of *Bhatta* would form the part of wages or

not.

15. The learned Counsel for the claimants had relied upon the Judgment of the Division Bench of this Court delivered way back in the year 1948 in the case of **Godavari Sugar Mills Ltd Vs. Shakuntala and another, AIR 1948 BOMBAY 158** to buttress his contention that, the wages includes the *Bhatta* amount. However, after having gone through the entire text of the said Judgment, it is difficult to accept the contention of Shri Bhokarika. In the said case, the Hon'ble Division Bench has considered the amount of dearness allowance and the other amenities like free quarters, water facility etc. Daily *Bhatta* is altogether a different factor, which was not for consideration in the aforesaid matter.

16. The learned Counsel had also relied upon the Judgment of the Hon'ble Orissa High Court in the case of **Divisional Manager, Oriental Insurance Company Ltd Vs. Giriwal Transport Corpn and Ors, 1995 (1) CLR 1114** and Hon'ble Madhya Pradesh High Court in the case of **Basantabai**

and another Vs. Shamim Bee and another, 2012 ACJ 1858.

In both these matters, the Hon'ble Judges of the respective High Courts have held that, the wages means all remuneration whether by way of salary, allowance or otherwise expressed in terms of money payable to a person in respect of his employment and includes any additional remuneration, travelling allowance or sum paid to the employed person to defray special expenses entailed on him by the nature of his employment. According to the learned Judges, the *Bhatta* received by an employee to form part of his income while computing compensation. Shri Upadhye, learned Counsel appearing for the Insurance Company cited the Judgment delivered by the learned Single Judge of this Court in the case of **Shaikh Badarunnisabi Sharafoddin and Another Vs. Shri Saiyyad Ayub Saiyyad Nur and Another, 2018 (157) FLR 895** to urge that, *Bhatta* would not form the part of the wages.

17. I have carefully perused the Judgments relied upon by the parties. This Court in the case of **Shaikh Badarunnisabi Sharafoddin** (cited supra) has elaborately discussed the said

issue and has ultimately recorded a conclusion that, daily *Bhatta* paid to an employee would not form the part of his wages as defined under the provisions of the Employee's Compensation Act. No contrary Judgment of this Court or of the Hon'ble Apex Court is brought to my notice by the other side. For the reasons above, I hold that, daily *Bhatta* would not form the part of wages of deceased Ananda. In the above circumstances, the compensation payable to the claimants will have to be assessed by holding the income of deceased Ananda to the tune of Rs.3000/- per month. Having regard to the age of deceased Ananda, the relevant factor would be 186.90. An amount equal to 50% of the monthly wages of the deceased will have to be multiplied by the said factor. Accordingly, the amount of compensation comes to Rs.2,80,350/-. The appellants – claimants are entitled to receive the said amount by way of compensation.

18. The next question which falls for my consideration is whether the learned Commissioner has committed an error in awarding the interest at the rate of 6% per annum when the

statute provides for grant of interest at the rate of 12% per annum. Relying upon the judgment of this Court in the case of **Smt. Nanda Pandhari Gatade & Ors Vs. Bhikaji Ghanshyam Shingane, 2009 (1) ALL MR 545**, it was argued by Shri Upadhye learned Counsel for the Insurance Company that, the objection as regards to non-grant of interest or grant of interest at the lesser rate provided in the statute cannot be raised in an appeal under Section 30 of the Act. Per contra, Shri Bhokariker learned Counsel appearing for the appellants cited the another Judgment of this Court in the case of **Smt Sangita Sharad Ahire & Ors Vs. Dharma Ganpat Shirode and another, 2018 (157) FLR 285** to buttress his contention that, the objection in regard to grant of interest at the lesser rate can be raised in appeal.

19. I have gone through the text of both these Judgments. It is true that, in the case of **Smt. Nanda Pandhari Gatade & Ors Vs. Bhikaji Ghanshyam Shingane** (cited supra) the learned Single Judge of this Court relying upon certain previous judgments of this Court has held that, in case of

non-grant of interest and penalty contemplated under Section 4-A of the Act of 1923, no remedy by way of appeal under Section 30 of the said Act is made available to the workmen. However, in para 6 of the said Judgment, the learned Judge has held that,

“6. In so far as award of interest is concerned, provisions of Section 4-A(3)(a) are mandatory. The minimum interest prescribed is 12% and therefore, the Commissioner has failed to exercise the jurisdiction available to him by not awarding any interest. It is significant to note that the Commissioner has under clause (b) thereof awarded 50% of the amount as compensation as penalty. Thus having found no justification on part of employer for not depositing the compensation immediately when imposition of penalty was found necessary, not awarding the statutory interest is nothing but failure to exercise the jurisdiction.”

The learned Single Judge eventually allowed the writ petition and awarded the interest to the petitioners therein at the rate of 12% per annum in place of 6% per annum as was awarded by the Commissioner.

20. In the case of **Smt Sangita Sharad Ahire & Ors Vs. Dharma Ganpat Shirode and another** (cited supra) the other learned Single Judge of this Court has dealt with the aforesaid issue in the first appeal and has observed thus :

“5. In this case, the Commissioner has awarded interest @6% p.a. and that too from the date of the impugned award.

In terms of provisions of Section 4A of the Employee's Compensation Act, 1923, the compensation in terms of Section 4 is required to be paid as soon as it falls due. The compensation was due within one month from the date of accident. Since, in this case, the employer had knowledge of the accident, therefore, the compensation fell due on 11.03.2003 since the accident took place on 11.02.2003. This provision direct payment of simple interest @12% p.a. or at such higher rate, as may be specified by the Central Government, by notification in the Official Gazette. In this case, therefore, the Commissioner was not right in awarding 6% p.a. interest in place of 12% p.a. Such interest was required to be awarded not from the date of the award but from 11.03.2003, which was the date on which compensation fell due. This is consistent with the law laid down by this Court in the case of ***Oriental Insurance Co. Ltd., Akola Branch v. Smt. Sunita wd/o Gajanan Kale and others, 2013 (5) ABR 831***. Even the Hon'ble Supreme Court, in the case of ***Oriental Insurance Co. Ltd. V. Mohd. Nasir & another, AIR 2009 SC (SUPP) 1619***, has held that starting point for computing interest under the Workmen's Compensation Act is not the date of the award, but when the amount fell due."

21. In the case of **Smt Sangita Sharad Ahire** (cited supra) no such objection appears to have been expressly raised as about the maintainability of appeal under Section 30 of the Act for non-grant of interest or for grant of interest at the lesser rate. In the said appeal this Court has clearly held that, the Commissioner was not right in awarding 6% interest when the statute provides the interest at the rate of 12%. I prefer to rely upon the said Judgment and accordingly hold that, in the present matter also, the Commissioner has committed an error in awarding the interest at the rate of 6% per annum and hold the appellants – claimants entitled for the interest at the rate of

12% per annum as provided in the Act.

22. For the reasons stated above, the following order is passed.

ORDER

(i) The appellants-claimants are held entitled for the total compensation of Rs.2,80,350/- i.e. for the enhanced compensation of Rs.1,43,450/- jointly or severally from respondent nos.1 and 2.

(ii) The appellants are held entitled for the interest on the entire aforesaid amount of Rs.2,80,350/- at the rate of 12% per annum jointly or severally from respondent nos.1 and 2 from the date of filing of the application till its realization.

(iii) Deficit Court fee, if any, be recovered from the appellants – claimants.

(iv) Award be drawn accordingly.

(v) The appeal thus stands partly allowed in the aforesaid terms.

(vi) Pending Civil Application, if any, stands disposed of.

(PR. BORA, J.)