

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

FIRST APPEAL NO. 499 OF 2013

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| 1 | Savita W/o. Gajanan Gofane,
Age 26 years, Occu. Household,
R/o. Ramabai Ambedkar Colony,
Jamner Road, Bhusawal,
District Jalgaon. | | |
| 2 | Jaishree D/o. Fakira Gofane,
Age 5 years, Minor, | | |
| 3 | Komal D/o. Gajanan Fakira Gofane,
Age 3 years, Minor, | .. | Appellants |

Versus

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| 1 | Sow. Meera Vishnu Karlekar,
Age 45 years, Occu. Business,
R/o. H. No. 1590, Near S.E.Oil Mills,
Bhusawal, Dist. Jalgaon. | | Appeal stands
dismissed against
respondent No.1 as
per Order dated
03-09-2013. |
| 2 | The New India Assurance Co.
Through its Divisional Manager,
Divisional Office, Adalat Road,
Aurangabad. | | |
| 3 | Kaushalyabai W/o. Fakira Gofane,
Age 53 years, Occu. Household,
R/o. Ramabai Ambedkar Colony,
Jamner Road, Bhusawal, Dist.Jalgaon. | | |
| 4 | Fakira S/o. Gokul Gofane,
Age 57 years, Occu. Nil,
R/o. Ramabai Ambedkar Colony,
Jamner Road, Bhusawal, Dist.Jalgaon. | | |
| 5 | Milind S/o. Fakira Gofane,
Age 25 years, Occu. Education,
R/o. Ramabai Ambedkar Colony,
Jamner Road, Bhusawal, Dist.Jalgaon. | .. | Respondents |

...
Shri. Pramod F. Patni, Advocate for Appellants.
Shri. S. R. Bodade, Advocate for Respondent No.2.
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CORAM : A. M. DHAVAL, J.

DATED : 7th AUGUST, 2018.

JUDGMENT :-

Heard. Admit. Taken up for final hearing at the admission stage.

2. Being aggrieved by the Judgment and Award passed by learned Commissioner, Workman's Compensation, Aurangabad (Judge, Labour Court, Aurangabad) in W.C.A.No. 92 of 2005 dated 23-08-2010, the legal heirs of the deceased claimant have preferred this appeal.

3. Heard Shri. P. F. Patni, learned Advocate for the appellants and Shri. S. R. Bodade, learned Advocate for respondent No.2.

4. The substantial question involved is, whether the claim petition under Workmen's Compensation Act can be dismissed on technical ground that some documents were not produced in original.

5. As per original claim petition, deceased Gajanan, aged 30 years was serving with respondent No.1 Meera. On 22-06-2005 in between 2.30 to 3.00 hours, at Nagar Naka, Waluj Road, near Mata Mandir Temple, Aurangabad, the deceased Gajanan was driver of respondent No.1 halted the truck bearing MH-19-J-3975 of respondent No.1 during the course of employment. That time, due to rash and negligent driving of driver of another vehicle bearing MH-17-R-5037, the accident occurred and the claimant sustained serious injuries to his right leg and thigh as both were fractured. A rod was required to be inserted. He also sustained injuries to his neck and right hand fracture due to accident. According to him, he has sustained 100 % permanent disablement. He, therefore, filed claim petition for Rs.2,00,000/- on

04-11-2005. But, the original claimant died on 20-11-2005. The legal heirs namely widow, three children, one brother appeared in the matter and amended the claim. It was contended that Gajanan died due to injuries sustained in the accident. Thus, disability was converted into death and the compensation of Rs.8,00,000/-with interest was claimed.

6. It appears that, both the respondents had attended the matter, but they did not file any written statement. The legal heirs of claimant examined Savita (widow of the deceased) as A.W.No.1 and Dr. Nilesh Mane as A.W.No.2. There are original documents viz. discharge card of deceased, two certificates issued by Dr. Mahajan, earlier case papers and xerox copy of death certificate filed.

7. The learned Labour Judge took a view that the applicants had relied on xerox copies of documents which were inadmissible evidence and those can not be relied upon. He, therefore, dismissed the application.

8. Heard learned Advocate Shri. Patni for the appellant and the learned Advocate Shri. Bodade for the respondent No.2.

9. The facts disclose that the application had proceeded without written statement from both the respondents. The applicant had claimed that he has sustained permanent disablement and the legal heirs of the claimant claimed that he died due to the accident.

10. Under Article 21, the right to life is guaranteed. It includes '*right to livelihood*'. If earning member of the family dies, his family members faced innumerable problems, economical, emotional and loss

of support. The provisions under Workmen's Compensation Act are made to provide atleast financial relief to the family which may not be sufficient to solve the economic problems of the family entirely. But, it can reduce the same. The Judges are appointed for performance of constitutional obligation for achieving the constitutional objects. As held in ***Ritesh Tiwari Versus State of Uttar Pradesh [(2010) 10 SCC 677]***, the Judges have to be active and should make all efforts for delivering justice to the parties before him. The justice should be based on truth and it is the duty of the Judge to elicit the truth. The Judges should avoid technicalities to deliver the substantial justice to the parties. The course adopted by learned trial Judge is too technical and not in accordance with the principles laid down by Apex Court. If the original is not filed and only xerox is filed, the Court has ample power to direct the parties to produce the original document under Section 165 of the Evidence Act and Order 16, Rule 14 of the C.P.C. The Court should take all possible steps to see that there is no miscarriage of justice and substantial justice is delivered on the basis of elicitation of the truth.

11. The record shows that there are several documents in original, but those are not considered by the Judge. The Judge has taken hyper technical view. If the applicants had no case then the Judge ought to have dismissed the matter on merits. But, the Judge was not supposed to dismiss the matter on technical ground that the original documents were not produced or xerox copies were not admissible. If a person particularly from a poor class seeks permanent disablement due to accident, and if he dies resulting into heavy loss to the family, the

family faces innumerable difficulties in survival. The Judges cannot act so in sensitive. Such hyper technical approach is against the basic principle of fair trial. Considering this aspect, I find that the ex-parte order deserves to be set aside. Hence, the order :-

ORDER

1. The appeal is allowed.
2. The Judgment and Order passed by the learned Commissioner, Wokrmn's Compensation, Aurangabad (Labour Court, Aurangabad) in W.C.A.No. 92 of 2005 dated 23-08-2010, stands set aside.
3. The matter be remanded to concerned Labour Court for reconsideration.
4. The learned Labour Judge after hearing the parties shall dispose of the matter as early as possible preferably within four months from the date receipt of writ.
5. Learned Advocates for the parties agree to keep their clients present before the learned Judge, Aurangabad, on 27th August, 2018.
6. Registry to sent the record as early as possible to the learned Judge, Labour Court, Aurangabad.
7. No order as to the costs.

[A. M. DHAVAL]
JUDGE

rrd.