

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1210 OF 2003

The New India Assurance Company Ltd.
Through its Divisional Manager,
Adalat Road, Aurangabad

Appellant

Versus

1. Smt. Sunita Gajanan Shirsath
age 23 years, occ. household
2. Sagar Gajanan Shrisath
age 1 year, minor u/g of
Respondent no. 1 Smt. Sunita
3. Jgannath Sakharam Shirsath
age 65 years, occ. nil
4. Sou. Laxmibai Jagannath Shirsath
age 60 years, occ. nil

All r/o Taklibhan, Tq. Shrirampur
Dist. Ahmednagar.

5. Shri Biban Sardar Shaikh
age major, occ. business
r/o Ghogargaon, Tq. Newasa
Dist. Ahmednagar.

Respondents

Mr. Mohit Deshmukh with Mr.S.G. Chapalgaonkar, advocates for
appellant.

CORAM : M.S. SONAK, J.

DATE : 10th JANUARY, 2018

JUDGMENT :

1. Heard learned counsel for appellants.

2. The challenge in this appeal is to the award dated 06.08.2003 made by the Commissioner for Workmen's Compensation, Ahmednagar directing appellant to pay respondents-claimants an amount of Rs. 4,27,140/- alongwith interest at the rate of 12% per annum.

3. Learned counsel for appellant submits that in this case, claimants have relied upon salary certificate which indicates salary of the deceased workman as Rs. 4,000/- per month. Claimants did not examine the employer in order to prove this document. Therefore, the appellant-insurance company got a summons issued to the employer to depose to such document. Mr. Biban Sardar Shaikh, the employer, who was also made party to the proceeding before the Commissioner, has stated in his deposition that deceased workman was indeed employed as driver by him but against salary of Rs. 2,000/- per month and not Rs.4,000/- per month. The employer explained that he had signed on a blank paper so as to enable the claimants to prepare salary certificate and what is stated in the salary certificate does not reflect the correct salary of the deceased.

4. Learned counsel for appellant submits that such deposition has been ignored by the Commissioner and this gives rise to the following substantial question of law.

IV Whether the Commissioner for Workmen's Compensation is justified in relying upon the document in form of salary certificate which is not even exhibited or proved by the applicants, specially when the contents of the

said Certificate are denied by the author of the document by stepping into the witness box.

5. The stage when this appeal was admitted, no substantial question of law was framed. Learned counsel for appellant was however, permitted to argue and satisfy this Court that the substantial question of law as aforesaid indeed arises in this appeal. Learned counsel for appellant has made submissions as aforesaid and urged that not only aforesaid substantial question of law arises in the matter but further, such question is required to be answered in favour of appellant. On this basis, learned counsel for appellant submits that compensation amount awarded to the claimants is required to be reduced by atleast 50%.

6. The issue as to whether the salary of deceased workman was Rs. 2,000/- as contended by claimants is basically an issue of fact. So also, the weight to be attached to the document i.e. salary certificate is an issue which involves evaluation of oral or documentary evidence. In that sense, this is also an issue of appreciation of evidence. Normally, in such situation, it cannot be said any question of law, much less, substantial question of law is involved.

7. This cannot be said to be a case of no evidence so as to raise a substantial question of law on account of perversity of finding of fact. Claimants had deposed that the salary of deceased workman was Rs. 4,000/- per month and had also produced salary certificate in support of such oral evidence. Even the employer who was summoned by appellant-insurance company has admitted

his signature on the salary certificate but has explained that the signature was given on the blank paper. The employer was also impleaded as respondent in the proceeding before the Commissioner but, the employer chose not to file any written statement contradicting claimants' assertion that deceased was drawing salary of Rs. 4,000/- per month. From this, it is clear that the finding that deceased workman was drawing salary of Rs. 4,000/- per month is not the finding which is based on no evidence so as to be stigmatised as perversity. At the highest, the finding is a result of appreciation of evidence. It is possible that the Commissioner may have evaluated the deposition of the employer as against the document which admittedly bears signature of the employer. It is also possible, as in the present case, that the Commissioner stands by the written document and the circumstance that, the employer, at the earliest opportunity, chose neither to file any written statement nor to contend that the blank paper was signed by him and the same was mis-used. Infact, from the deposition of employer, it transpires that the employer allegedly signed on blank paper in order to enable the claimants to prepare salary certificate. All these are really matters of appreciation of evidence and it cannot be said that they can raise any question of law, much less, substantial question of law. Accordingly, it is not possible to allow this appeal and reduce the compensation by 50%.

8. For the aforesaid reasons, at this point of time, there is no case made out to interfere in the impugned award and reduce compensation awarded to the claimants. Accordingly, appeal is dismissed. There shall be no order as to costs.

9. Pending civil application if any, does not survive and stands disposed of.

(M.S. SONAK, J.)

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