

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1669 OF 2016

1] Smt. Shaikh Badarunnisabi Sharafoddin
Age - 45 years, Occupation - Household

2] Shri. Sharafoddin Shaikh Burhanoddin
Age - 52 years, Occupation - Nil,

Both are residing at Tongaon,
Tal. Bhadgaon, Dist. Jalgaon

.. Appellants
(Orig. Claimants)

Versus

1] Shri. Saiyyad Ayub Saiyyad Nur,
Age - Major, Occupation - Vehicle Owner
R/o 1046, Ghodbardi, Tongaon,
Tal. Bhadgaon

2] The Divisional Manager,
The United India Insurance Company Ltd.,
2nd Floor, Mnasingh Market,
Station Road, Jalgaon

.. Respondents
(Orig. Respondents)

...

Mr. M.M. Bhokarikar, Advocate for appellants
Mr. Swapnil S. Rathi, Advocate for respondent no.2
Respondent no.1 served - absent

...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 08-03-2018

ORAL JUDGMENT :

1. Heard learned counsel for the parties.

2. Learned counsel are *ad idem* that the factual aspects are not required to be considered in *extenso*. Learned counsel for the appellants states that appeal raises two substantial questions of law.

3. First is about compatibility of date of interest which is from the date of its award granted under the award by the Commissioner for Workmen's Compensation with the statutory provision under section 4-A(3)(a) of the Employee's Compensation Act, 1923.

4. The next question is about propriety of exclusion of Rs. 70/- per day paid as *bhatta* / daily allowance from computation of income of the deceased in the face of common knowledge that a driver going outstation requires expenses to be incurred over his personal needs.

5. Appellants are parents of Shaikh Shafiuddin. Shafiuddin had been working as driver on a commercial vehicle owned by respondent no.1. The vehicle, he had been employed as a driver on, had met with an accident on 13-08-2011 and he had suffered injuries and had succumbed to the same.

6. According to learned counsel for appellants, Shafiuddin was the only earning member in family and with his death, the only bread earner in the family has been lost. Appellants had claimed that Shafiuddin had been earning wages to the tune of Rs.6000/- per month and additionally, Rs.70/- per day were being paid to him towards daily allowance. Thus, they had claimed compensation of Rs.8,79,800/- with interest thereon at the rate of 12% per annum and penalty.

7. Respondent no.1 had refuted the claim of compensation against him stating that accident occurred due to technical default and vehicle had been insured with respondent no.2. He supported the case of the claimants stating that deceased had been a good driver and had been working with him for over two years. Premium of the insurance company was being regularly paid and the accident had occurred during the course of employment. As such, respondent no. 2 - insurance company alone is liable to pay compensation.

8. Respondent no.2 - insurance company had opposed the claims stating that there had been no employer-employee relationship. Contending further that driving licence of deceased had

expired on 10-08-2011 and, as such, it could not be said that he was holding a valid and effective licence. The claim had not been tenable. The insurance company, as such, purported to deny the liability.

9. Issues were framed by the Commissioner for Workmen's Compensation with regard to the earning by deceased Shafiuddin and about his employment by respondent no.1, as also about the death having been due to accident in the course of employment and about entitlement of the claimants to receive compensation with interest and penalty. The Commissioner found that there was subsisting employer - employee relationship between deceased Shafiuddin and respondent no.1. His earning had been to the tune of Rs.6000/- per month and the claimants were entitled to a sum of Rs.6,14,110/- to be paid within one month from date of said order lest it shall carry interest at the rate of 12% from the date of order. The tribunal while declining the penalty, has observed that the applicants could not reason out claim for penalty having any cogent basis.

10. Section 4-A(3)(a) of the Employee's Compensation Act, 1923, reads, thus :

" 4-A. Compensation to be paid when due and penalty for default

(1) ...

(2) ...

(3) *Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall, -*

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) "

11. Learned counsel for appellants Mr. Bhokarika presses into service a decision of Supreme Court in the case of *Saberabibi Yakubhai Shaikh V. National Insurance Co. Ltd. and others* reported in 2014 AIR SCW 1584 in respect of the question about date from which interest is liable to be paid and submits that following observations in paragraph no. 12 in said case occur on the background that while the high court had modified the award granted by the commissioner directing payment of interest from the date of award and not from one month from the date of accident. He points out paragraph no. 12 from said judgment, which is reproduced hereinbelow.

" 12. In view of the aforesaid settled proposition of law, the appeal is allowed and the judgment and order of the High Court is set aside. The appellants shall be entitled to interest at the rate of 12% from the date of the accident."

12. Having regard to the provisions and observations of Supreme Court in *Saberabibi Yakubbbhai Shaikh V. National Insurance Co. Ltd. and others* (supra) with reference to said provisions, it is imperative to consider that the tribunal has been in error in directing payment of interest from the date of award. Thus, the tribunal's award in this respect will have to undergo change in tune with the decision, as appearing in aforesaid citation. Thus, respondents would be liable to pay interest at the rate as awarded by the commissioner after one month from the date of accident, which is stated to be 13-09-2011.

13. As far as the second aspect is concerned, the claim with regard to computation of daily allowance / *bhatta* payable to deceased in his salary is concerned, this as well is an area which is no longer *res integra*.

14. Learned counsel Mr. Rathi appearing for respondent no.2 is right in pointing out that such daily allowance / *bhatta* payable to driver, would not be computable in the term "wages" payable to an employee. Wages as defined under section 2(1)(m) of the Employees Compensation Act, 1923, are defined as under:-

" *"wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of an employee towards any pension or provident fund or a sum paid to an*

employee to cover any special expenses entailed on him by the nature of his employment;"

15. Learned counsel Mr. Rathi has pointed out decision in the case of *United India Insurance Company Limited V. Amidabi W/o. Dulushah & Ors.* reported in *2010 BCI 91*, wherein it has been clearly found that *bhatta* paid to deceased employee would not fall within the term "wages" defined under section 2(1)(m) of the Employee's Compensation Act, 1923.

16. Although learned counsel for appellants cited decision in the case of *Oriental Insurance Company Ltd., Badnera Road, Amravati V. Mohammad Sabir and others* reported in *2013(5) ABR 975*, wherein ostensibly it may appear that daily allowance has been considered to be component of wages payable to an employee, however, said decision appears to have been rendered in different context and without reference to decision of *United India Insurance Company Ltd. V. Amidabi W/o. Dulushah & Ors.* (supra) and, particularly, the definition of term "wages" appearing under the Act of 1923. In view of aforesaid, first appeal will have to be partly allowed.

17. First appeal is partly allowed. The claim with regard to inclusion of *bhatta* / daily allowance / travelling allowance in the wages payable to an employee is declined. Commissioner's award

stands modified to the effect that interest directed to be paid therein, shall be computed from the date one month after date of accident in accordance with judgment of Supreme Court in the case of *Saberabibi Yakubbbhai Shaikh V. National Insurance Co. Ltd. and others* (supra).

[SUNIL P. DESHMUKH]
JUDGE

arp/