

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

908 FIRST APPEAL NO. 2133 OF 2008

1. Smt.Anita Ashok Patil
Age: 26 years, Occu.: Household.
 2. Ku.Harshali Ashok Patil
Age: 6 years, Occu.: Education.
 3. Chi.Shubham Ashok Patil
Age: 4 years, Occu.: Education.
 4. Shri Natha Daga Patil
Age: 55 years, Occu.: Nil.
 5. Sau.Indubai Natha Patil
Age: 51 years, Occu.: Household.
- ..Appellants
(Ori. Claimants)

Appellant No.1 is for herself and the Natural Guardian
of No.2 to 3.
All are r/o.Vadji, Taluka – Bhadgaon, Dist.Jalgaon.

Versus

1. Shri.Shashikant Babulal Yeole
Age: Major,
R/o.At and Post. Pachora Road, Bhadgaon.
Taluka - Bhadgaon, Dist.- Jalgaon.
 2. The New India Assurance Company Ltd.,
Through: Divisional Manager,
Khandesh Mill Complex, Neharu Chauk,
Jalgaon.
- ..Opponents
(Ori. Respondents)

...
Advocate for Appellants : Shri M.M.Bhokarikar
Advocate for Respondent No.2 : Shri S.G.Chapalgaonkar
Respondent No.1 is served.
...

CORAM : PR.BORA, J.

DATE: 27th September, 2018

ORAL JUDGMENT:-

1. Present appeal is filed against the Judgment and order passed by the Commissioner for Workmen's Compensation and Judge, Labour Court, Jalgaon, in Workmen Compensation Application No.45 of 2004. The original claimants have preferred the present appeal being dissatisfied with the amount of compensation awarded by the Commissioner for Workmen's Compensation.

2. Heard Shri M.M.Bhokarika, learned Counsel appearing for the appellants - claimants and Shri S.G.Chapalgaonkar, learned Counsel appearing for respondent No.2 Insurance Company. Respondent No.1 though duly served has not caused appearance in the matter.

3. There is no dispute that deceased Ashok Natha Patil met with an accident arising out of and in the course of employment happened on 17.09.2004. It is further not in dispute that at the relevant time, his age was 29 years. It was the contention of the claimants that deceased Ashok was drawing salary of Rs.4,500/- per month and also used to get daily Bhatta of Rs.60/-. In order to prove the income of deceased Ashok, the employer of deceased Ashok was examined by the claimants. Employer has deposed

that he was paying Rs.4,500/- per month to deceased Ashok by way of salary. The Commissioner for Workmen's Compensation, however, while assessing the amount of compensation, has held the income of the deceased Ashok to the tune of Rs.2,400/- per month and has accordingly determined the amount of compensation.

4. Shri M.M.Bhokarikar, learned Counsel appearing for the appellants – claimants submitted that there was no reason for the Tribunal to disbelieve the testimony of the witness examined by the claimants, who has specifically deposed before the Court that he was paying salary of Rs.4,500/- per month to deceased Ashok. The learned Counsel submitted that in absence of any contrary evidence, the salary of deceased must have been held by the Tribunal to Rs.4,500/- per month and amount of compensation must have been determined on that basis. The learned Counsel submitted that to that extent the impugned award needs to be modified and the amount of compensation needs to be accordingly enhanced. Another point, which the learned Counsel has raised pertains to the aspect of interest as well as penalty. The learned Counsel submitted that the Statute provides award of interest @ 12% p.a. and in such circumstances, the award of interest @ 6% p.a. by the learned Commissioner cannot be

sustained. Learned Counsel submitted that the impugned award needs to be modified in so far as award of interest is concerned. The learned Counsel further submitted that the learned Commissioner was convinced that even after receipt of notice issued by the claimants for the payment of amount of compensation, the same was not paid by the employer. In the circumstances, the Commissioner for Workmen's Compensation must have awarded the penalty in accordance with the provisions of law against the employer. The learned Counsel submitted that the impugned Judgment and award be modified accordingly and the claimants be made entitled for the enhanced amount of compensation.

5. Shri S.G.Chapalgaonkar, learned Counsel appearing for the Insurance Company submitted that in so far as award of interest @ 12% p.a. is concerned, the contention raised by the appellants deserves to be accepted in view of the statutory provision. As about the aspect of penalty, the learned Counsel submitted that the penalty cannot be imposed on the Insurance Company. In so far as amount of compensation determined by the Commissioner for Workmen's Compensation holding the income of deceased Ashok to the tune of Rs.2,400/- per month, the learned Counsel submitted that there appears no reason to cause interference in

the order so passed. The learned Counsel submitted that no document has been produced to show that salary of Rs.4,500/- per month was being paid to deceased Ashok. Learned Counsel submitted that evidence in this regard could have been brought on record by summoning other employees of the said employer. The learned Counsel submitted that in the circumstances, the Commissioner for Workmen's Compensation has considered the provisions under the Minimum Wages Act and has appropriately held the salary of deceased Ashok to the tune of Rs.2,400/- per month and has accordingly determined the amount of compensation by multiplying the said amount by relevant factor according to the age of deceased Ashok. The learned Counsel, therefore, submitted for passing appropriate orders accordingly.

6. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. As I have noted herein above, majority facts are not in dispute. The only question, which falls for determination is 'what could have been the amount of salary to be taken into account for determining the amount of compensation. According to the appellants, the salary must have been held to the tune of Rs. 4,500/- per month, as against it, according to the learned Counsel appearing for the Insurance Company, the salary has been rightly

held by the Commissioner for Workmen's Compensation as Rs. 2,400/- per month. I have read the discussion made by the learned Commissioner in paragraph No.15 of its Judgment. It is true that in order to prove the salary income of deceased Ashok, the employer of deceased Ashok was examined by the claimants and the said employer in his testimony has stated the salary of deceased Ashok to the tune of Rs.4,500/- per month. However, it is also the fact that no documentary evidence was placed on record by the said witness evidencing that infact the said salary was paid. It was possible for him to place on record the salary slip or any other record demonstrating the remittance of the salary at that rate. The claimants also did not bring on record any further evidence supporting the contention that deceased Ashok was receiving salary to the tune of Rs.4,500/- per month.

7. Another reason assigned by the Commissioner for Workmen's Compensation for not believing the version of the respondent No.1 in so far as salary of deceased Ashok is concerned, is that though respondent No.1 was under an obligation to fill up the form and submit the necessary information with the Insurance Company informing the Insurance Company as about salary income of the deceased, the same was not done by the employer. It does not appear to me that the Commissioner for

Workmen's Compensation has committed any error in not believing the evidence of respondent No.1, which has not been corroborated by any other evidence.

8. The learned Counsel Shri S.G.Chapalgaonkar referred to the Judgment of Hon'ble Apex Court in the case of ***Laxmi Devi and Others Vs. Mohammad Tabbar and Another [(2008) 12 Supreme Court Cases 165]***, wherein the Apex Court has held the notional income of Rs.3,000/- per month. It appears to me that in the present case, there may not be any difficulty to hold the income of the deceased to the tune of Rs.3,000/- per month by applying the criteria of notional income. Thus, the compensation payable would be of Rs.3,14,880/- ($209.92 \times 1500 = \text{Rs.}3,14,880/-$). The claimants are certainly entitled for the aforesaid amount.

9. In so far as interest part is concerned, the contention of the claimants deserves to be accepted in toto in view of the unambiguous provision in that regard. The accident admittedly had happened on 17.09.2004 and deceased Ashok died on same day. In the circumstances, compensation had become payable within one month thereafter. Thus, in any case employer was under an obligation to pay the amount of compensation on or before 17.10.2004. Admittedly, the employer did not deposit the amount of compensation. It is also not disputed that before filing

the claim petition, notice was issued by the claimants to the respondents. In the circumstances, it cannot be accepted that the respondent No.1 was not aware of the accident and death of his employee Ashok in such accident. The claimants were thus entitled for interest @ 12% p.a.. The Commissioner, thus, committed an error in awarding interest @ 6% p.a. The mistake so committed by the Commissioner deserves to be rectified.

10. As noted herein above, the amount of compensation had become payable on 17.10.2004. The employer – respondent No.1 has not provided any justification for not depositing the amount of compensation within the aforesaid period. Respondent No.1 was having sufficient notice of the accidental death of his employee deceased Ashok. Moreover, as noted herein above, the claimants had issued notice to the employer as well as the Insurance Company before filing of the application before the Commissioner for Workmen's Compensation. In the circumstances, no other notice was required to be issued to the employer i.e. respondent No.1. In view of the fact that respondent No.1 did not deposit the amount of compensation on or before 17.10.2004 and also did not provide any justification for not depositing the said amount, he is liable to pay 50% of the amount of compensation by way of penalty and I hold the claimants entitled to receive the said

amount from respondent No.1 with interest thereon @ 12% p.a. from 17.10.2004 till its realization. For the reasons recorded above, the following order is passed.

ORDER

I) The amount of compensation awarded by the Commissioner for Workmen's Compensation at Jalgaon, of Rs.2,01,904/- is enhanced to Rs.3,14,880/-.

II) Respondent Nos.1 and 2 shall jointly and severally pay the aforesaid amount to the claimants with interest accrued thereon @ 12% from 17.10.2004 till its realization.

III) Respondent No.1 shall pay to the claimants an amount of Rs.1,57,440/- by way of penalty together with the interest thereon @ 12% p.a. from 17.10.2004 till its realization.

IV) Appeal stands allowed in the above terms.

(P.R.BORA)
JUDGE

SPT