

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

**FIRST APPEAL NO.2930 OF 2008
WITH
CIVIL APPLICATION NO.2502 OF 1999
IN
FIRST APPEAL NO.2930 OF 2008**

The Manager,
United India Insurance Co. Ltd.,
S.T. Patrike's Business Complex,
Museum Road, Bangalore – 25,
Policy No.71801/11/41/01/0019/96,
From 11/03/96 to 10/03/97,
through its Local Branch Manager,
United India Insurance Co. Ltd.,
Baldwa Building, Hanuman Chowk,
Latur – 413 512

**APPELLNT
(Ori. Respondent No.2)**

VERSUS

1. Bhagamma w/o Shivraj Ghale,
Age : 42 years, Occu. Household,
R/o Muchalamba, Tq. Baswa Kalyan,
District Bidar (Karnataka State) **RESPONDENT**
(Ori. Claimant)
2. The Management of M/s Skyline
Construction Pvt. Ltd., through
its Local Manager Krishan
Prassankumar Onnithan,
Age : 37 years, Occu. Manager
of abovesaid Co., Earthquake
New Rehabilitation Unit No.2,
Village Killari at present **RESPONDENT**
R/o Adarsh Colony, Latur **(Orig. Respondent**
No.1)

**(Appeal is dismissed against
respondent No.2, as per
Registrar's order dt.17.11.2009)**

Mr. D.V. Soman, Advocate for the appellant
Mr. Nilkkanth D. Batule, Advocate holding for
Shri S.V. Natu, Advocate for respondent No.1

CORAM : SUNIL K. KOTWAL, J.

JUDGMENT RESERVED ON : 26th APRIL, 2019
JUDGMENT PRONOUNCED ON : 2nd MAY, 2019

JUDGMENT :

This appeal is directed by opponent No.2
– United India Insurance Co. Ltd. against the
judgment and award dated 30th January, 1999
passed by the Commissioner, Employees'
Compensation ("E.C.", for short), Latur in
W.C.A.No.36 of 1997. Respondent No.1 in the
appeal is original claimant and respondent No.2
is original opponent No.1, who was the employer
of deceased Basavraj.

2. The facts leading to institution of this
appeal are that the claimant is the mother of
deceased Basavraj, who used to work on the site
of opponent No.1 at Killari for rehabilitation
of earthquake affected persons. On 22nd May,

1996 at about 10.20 p.m., when the work was going on, the deceased, who used to work as supervisor on that site, sustained electric shock when he was inspecting electric motor on the water tank at the site. When the deceased was rushed to the hospital, he was declared dead due to cardiac failure due to electric shock. FIR was lodged on 23rd May, 1996 and post-mortem examination of the dead-body of the deceased was carried out. The claimant being surviving dependent of the deceased filed claim petition before the Commissioner, E.C., Latur.

3. By filing written statement, opponent No.1 admitted its relationship with the deceased as employer and employee. Even occurrence of the accident and death of the deceased due to electrocution is not disputed by opponent No.1. Even salary of the deceased at the rate of Rs.3000/- per month is not disputed. Contention of opponent No.1 is that all workmen and other employees working on the site were duly insured with opponent No.2 Insurance Company and

therefore, opponent No.2 is liable to pay the compensation.

4. Only opponent No.2 countered the claim by filing written statement (Exh-C9) on the ground that it is the primary responsibility of employer – opponent No.1 to pay the compensation and thereafter, opponent No.2 has to only indemnify opponent No.1. However, opponent No.2 denied the relationship in between the deceased and opponent No.1 as employee and employer, so also the monthly income of the deceased. The contention of opponent No.2 is that the deceased was not covered under the policy of the insurance as he died due to his own negligence.

5. After considering the evidence placed on record by the claimant and opponent No.1, the Commissioner, E.C., Latur allowed the claim petition and directed opponent No.2 to pay compensation of Rs.2,21,370/- to the claimant and directed opponent No.1 to pay penalty of Rs.10,000/- and interest on the compensation amount from the date it falls due. This award is

challenged only by opponent No.2 in the present appeal.

6. Heard Shri D.V. Soman, learned counsel for the appellant and Shri Nilkanth D. Batule, learned counsel, holding for Shri S.V. Natu, Advocate for respondent No.1.

7. Learned counsel for the appellant assailed the judgment and award passed by the Commissioner, E.C., Latur (hereinafter referred to as "Commissioner, EC") on three grounds. The first ground raised by the appellant is that the income of the deceased was not established as Rs.3000/- per month, but K. Prasannakumar (CW1) has admitted in his cross-examination that the salary of the deceased was only Rs.1500/- per month. The second ground raised by learned counsel for the appellant is that the deceased died in accident on the site of work due to his own negligence as he was not electrician and it was not his task to repair the electric motor at the site. The last contention of learned counsel for the appellant is that the policy of the

insurance did not cover the risk of the deceased who worked at altogether different site of construction.

8. On the other hand, learned counsel for respondent No.1 contended that salary certificate (Article-A) shows that the deceased used to draw salary of Rs.3000/- per month. He submits that in written statement, opponent No.1 – employer has admitted his relationship with the deceased as employer and employee and even the monthly salary of the deceased. He submits that being supervisor on the work-site of construction, the inspection of electric motor was during the course of employment of the deceased and therefore, the death of the deceased was during the course of employment. He submits that the Commissioner rightly awarded compensation in favour of the claimant.

9. Following substantial question of law arises for my consideration:-

"Whether claimant is entitled to compensation under Section 4(1)(a) of the Employees' Compensation Act with interest and penalty under Section 4-A(3) of E.C. Act ?"

10. At the outset, I must make it clear that the claimant Bhagamma being mother of the deceased and dependent on earning of the deceased falls in the category of 'dependent' under Section 2 (1) (d) of the Employees' Compensation Act, 1923 ("EC Act", for short). Therefore, the claim petition for compensation filed by the claimant on the ground of accidental death of her son during the course of employment at the work-site, is certainly maintainable.

11. Under Section 3 (1) of the EC Act, employer is liable to pay compensation to the employee or dependent of the deceased employee, if personal injury is caused to an employee by accident arising and in course of his employment. Under the Proviso to Section 3, the

employer is not so liable only under following contingencies. :-

"(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days.

(b) in respect of any injury not resulting in death or permanent total disablement, caused by an accident which is directly attributable to -

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the employee to an order expressly given or to a rule expressly framed, for the purpose of securing the safety of employee, or

(iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employees."

12. A bare glance at Section 3(1) of the EC Act makes it clear that when it is not contention of opponent No.2 that the deceased had removed or disregarded in safety guard

provided for the purposes of securing safety of the employees by the employer, in view of Section 3(1) of the EC Act, the defence of death of the deceased due to his own negligence, is not available to opponent No.2 – Insurance Company.

13. In the case at hand, opponent No.2 – Insurance Company has disputed the relationship of employee and employer in between the deceased and opponent No.1. This objection holds no substance for the reason that opponent No.1 has specifically admitted in his written statement that the deceased used to work as supervisor on his work-site at Killari. It is the contract of employment only in between employee and employer and when employer admits such relationship, the insurer cannot dispute the same. Otherwise also, by examining Shri K. Prasannakumar, the Project Manager of respondent No.1 (CW1), the relationship in between the deceased and opponent No.1 as employee and employer is duly established.

14. The monthly salary of deceased is disputed by opponent No.2. However, K. Prasannakumar (CW1) has duly proved the salary certificate (Exh-U-9/3) of the deceased, which shows that the deceased used to draw salary of Rs.3000/- per month. No doubt, this witness has admitted in his cross-examination that salary of Rs.1500/- per month was being paid to the deceased. However, in voluntary statement, this witness has made it clear that in addition to this amount of Rs.1500/-, other allowances were also being paid to the deceased. Therefore, over much importance cannot be given to this admission. In the circumstances, I have no hesitation to hold that the claimant has duly proved that monthly income of the deceased out of employment with opponent No.1 was Rs.3000/- per month.

15. Next question arises whether the deceased died during the course of employment or not. Learned counsel for the appellant

contended that it was not the duty of deceased to check the electric motor and he was assigned with the work to supervise the labours. However, it cannot be ignored that being supervisor, the deceased was expected to look after overall entire work at the site of construction and his duty could not be restricted with only labours. So also, when the deceased was directed by opponent No.1 to check the functioning of electric motor, he cannot refuse to inspect the electric motor though he was not expert electrician. From the evidence of K. Prasannakumar (CW1), it emerges that on 22nd May, 1996, the deceased lost his life by receiving the electric shock at about 10.30 p.m. Even from the evidence of K.M. Shankhaiyya (DW2), who was the site incharge at Killari, it emerges that on the date of incident, when deceased Basavraj was testing the electric motor, he sustained electric shock and he was declared dead in the hospital. On the basis of this evidence, it can be gathered that the deceased inspected electric motor during the

course of his employment as supervisor and therefore, it can be held that the deceased died during the course of employment.

16. In "**Zubeda Bano Vs. Maharashtra State Road Transport Corporation**" [MHLR 1990 (2) 681 (DB)], Division Bench of this Court has made it clear that the provisions of Evidence Act do not apply to the proceeding under the EC Act and the claimant has to only establish his claim on the touchstone of preponderance of probability. Only casual relation in between cause of death and employment is to be established and proof beyond reasonable doubt is not required in such proceeding. In view of this legal position, I have no hesitation to hold that the claimant has proved that the deceased died during the course of employment. On the other hand, opponent No.2 failed to prove that the deceased died due to his own negligence.

17. Now question arises whether, under the policy of insurance, the risk of the deceased was covered or not. The policy of the insurance

(Exh-U-5/4) shows that clerical staff or other employees engaged, and engineering staff working at Killari site of opponent No.1 were duly insured with opponent No.2 – Insurance Company and policy of the insurance was in force from 11th March, 1996 to 10th March, 1997. Therefore, in the circumstance, I have no hesitation to hold that the risk of deceased Basavraj, who was the employee of opponent No.1, was duly covered under the abovesaid policy of insurance.

18. Now question arises whether the compensation awarded by the Commissioner is exorbitant or just and reasonable. The salary of the deceased was Rs.3000/- per month. Section 4 (1) (a) of the EC Act provides that in case of the death, the amount of compensation shall be an amount equal to 50% of the monthly wages of the deceased employee multiplied by relevant factor. The bonafide certificate of deceased Basavraj shows that his date of birth was 15th June, 1975. Thus, on the date of death, he was 22 years old. Under Schedule-IV of the

EC Act, for the age of 22 years, the relevant factor is 221.37. Thus, the claimant is entitled to compensation of Rs.3,32,055.00 (i.e. Rs.1500/- x 221.37). However, the Commissioner has awarded compensation of Rs.2,21,370/- to the claimant, which is less than the entitlement of the claimant.

19. So also, in view of law settled by the Apex Court in "***Oriental Insurance Co. Ltd. Vs. Siby George and others***" (AIR 2012 SC 3144), the compensation under Section 4-A of the EC Act falls due from the date of personal injury caused to the workman and not from the date of Commissioner's order. Thus, the compensation falls due from the employer from the date of accident i.e. 22nd May, 1996.

20. Section 4-A (3) provides that when the employer is in default in paying the compensation under the EC Act within one month from the date it fell due, the Commissioner shall direct the employer to pay simple interest on compensation amount at the rate of 12% per

annum and if there is no justification for delay, the Commissioner can direct the employer to pay penalty not exceeding 50% of such amount of compensation.

21. In the case at hand, opponent No.1 Employer did not deposit compensation amount within one month from the date of occurrence of the accident and for delay, the employer did not give any justification. Therefore, the claimant is entitled to interest on compensation amount at the rate of 12% per annum from 22nd June, 1996 till payment of entire compensation. The claimant is also entitled to penalty of Rs.1,66,027/- from opponent No.1. As the employees of opponent No.1 were insured with opponent No.2 - Insurance Company, opponent Nos.1 and 2 are jointly and severally liable to pay compensation amount to the claimant with abovesaid interest thereon.

22. However, unfortunately, in the case at hand, no cross-objection is filed by the claimant, claiming the enhancement in the

compensation. Therefore, this Court cannot enhance the compensation, which is awarded by the Commissioner. In the circumstances, I have no other alternative but to dismiss the appeal with following modification in the operative part of the order passed by the Commissioner, E.C., Latur. I answer substantial question of law in the affirmative and pass following order.

23. Accordingly, First Appeal No.2930 of 2008 is dismissed. However, the order passed by the Commissioner, Employees' Compensation, Latur in W.C.A. No.36 of 1997 is modified as under :-

“(i) Application is allowed.

(ii) Opponent Nos.1 and 2 do jointly and severally pay compensation of Rs.2,21,370/- to the claimant.

(iii) Opponent No.1 do pay penalty of Rs.10,000/- to the claimant and interest at the rate of 12% per annum on compensation amount of Rs.2,21,370/- from 22nd June, 1996 till realization of compensation amount.

(iv) The parties to bear their respective costs of the petition."

24. Compensation and penalty amount if deposited by appellant before the Commissioner, Employees' Compensation, Latur, be paid to respondent No.1/claimant after the appeal period is over.

25. Parties to bear their respective costs of the appeal.

26. The appeal is disposed of in the abovesaid terms.

27. In view of dismissal of First Appeal, Civil Application No.2502/1999 does not survive and stands disposed of.

[SUNIL K. KOTWAL]
JUDGE

npj/fa1839-2018