IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1284 OF 2018

1. Vilas s/o. Lala Wagh,
Age : 54 Occu: Nil,

2. Kokila w/o. Vilas Wagh,
Age : 48 year Occu :- Household,
All r/o. Dahivad, Tq.
Chalisgaon, Dist. Jalgaon. ... **APPLICANTS** Ori.Claimants

VERSUS

1. Shila w/o. Vinod Wagh,
Age : 45 year Occu: Business,
R/o. 17, Pradhu Krupa Society,
Chanakyapuri, Badoda,
Tq. Badoda, Dist. Vadodara
(Gujrat State).

2. National Insurance Co. Ltd.,
through Branch Manager, Jalgaon
Branch, Jalgaon,
Tal. & Dist. Jalgaon ... **Respondents** Org.Rspndnts

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Mr. U.S. Patil, for Appellant.
Mr. S. N. Pagare, for Respondent No.2.

...

CORAM : SUNIL K. KOTWAL, J.

Reserved on : 15th April, 2019
Pronounced on : 29th April, 2019

JUDGMENT:

1. This appeal is directed by original claimants for enhancement of the compensation against the judgment and award passed by the Commissioner for Workmen's Compensation, Jalgaon in W.C.A. No. 27/2011. Respondents are original respondents in the petition.

2. This appeal being for enhancement of the compensation, as no cross-objection is filed by respondent No.1 employee or respondent No.2 insurer of the offending vehicle, the detail facts regarding occurrence of the accident need not be reproduced for passing judgment in the appeal.

3. Heard Mr. U.S. Patil, learned counsel for appellant and Mr. S.N. Pagare for respondent No.2 insurer.

4. Learned counsel for appellant submits that though by filing written statement, the employer of deceased admitted monthly salary of the deceased @ of Rs.6000/- per month, the learned Commissioner considered the monthly income of the deceased @ of Rs.4000/- only per month. He submits that as the age of the deceased at the time of death was 23 years, relevant factor under schedule (iv) of E.C.,Act applicable is 219.95. Therefore, the compensation amount deserves to be enhanced.

5. Next contention of learned counsel for appellant is that the interest on compensation amount was awarded from the date of passing of the order. It should be at least from the date of filing of the application. He has drawn my attention towards notices

served to the employer insurance company by the claimant before filing of claim petition.

6. Learned counsel for respondent No.2 submits that age of the deceased is not duly proved and even salary is not proved by examining the employer of the deceased. He supported the judgment passed by the Commissioner.

7. Following substantial questions of law arise for my consideration:-

Sr. No.	Points	Finding
1	Whether claimants are entitled to compensation under Section 4 of EC Act and what would be the quantum ?	Yes
2	Whether under Section 4A(3)(a) claimants are entitled to interest of compensation @12% from the date of filing of claim petition ?	Claimants are entitled to interest on compensation from 25.11.2010.
3	Whether the claimants are entitled for penalty under Section 4A(3)(b) of EC Act.	Affirmative

8. In the case at hand, the claimants claim that deceased used to draw salary of Rs.8000/- per month. To substantiate this contention they have not filed and proved the monthly salary slip of the deceased. However, by filing written statement Ex.C-10, the employer of the deceased has admitted that the total

salary of the deceased was Rs.6000/- per month. In view of this admission given by employer of the deceased, I have no hesitation to hold that monthly salary of the deceased at the relevant time of his death was Rs.6000/- per month, as it was the contract in between the employer and employee.

9. According to the claimant, at the time of death, the deceased was 21 years old. However, to substantiate this contention, claimants have not filed birth certificate of the deceased. The P.M. report of the deceased at Ex.U-21 shows that at the time of death the age of the deceased was 23 years. Accordingly, I hold that the Commissioner did not commit mistake while holding that the deceased was 23 years old at the time of his death.

10. Under schedule IV of E.C., Act, for the age of 23 year the factor applicable is 219.95. Under Section 4 of E.C.,Act the amount of compensation in death claim is to be determined as 50% of monthly wages multiplied by relevant factor. Thus, 50% amount of wages i.e. Rs.3,000/- if multiplied by relevant factor of 219.95 the amount of compensation comes to Rs.6,59,850/-. I answer question No.1 accordingly.

11. Section 4-A of E.C., Act provides that

compensation under Section 4 shall be paid since it falls due. Section 4-A (3) provides that where any employer is in default in paying compensation due under this Act within one month from the date it falls due, the Commissioner shall ;

> a) direct that the employer shall, in addition to the amount of 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
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> b) If, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:
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> Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

12. A bare glance of Section 4-A(3)(a) shows that it is the duty of employer to pay the compensation within one month from the date it falls due. Section 3 of E.C.,Act provides that the compensation in case of accidental death during employment falls due from the date of accident. Even Apex Court in ***Oriental Insurance Company Limited Vs. Siby George and others, (AIR 2012 SC 3144)*** *ruled that the compensation under this provision falls due as soon as personal injury was*

caused to the workman during the course of employment.

13. In the case at hand, the deceased died in accident during the course of employment on 25.10.2010. This fact is not at all disputed by respondent No.1 employer. Thus, the payment of compensation falls due on 25.10.2010. However, undisputedly, within one month from 25.10.2010, the respondent No.1 did not deposit the compensation amount before the Commissioner. Even the claimants served notices to the respondent Nos. 1 and 2 on 20.04.2011 and 26.04.2011 respectively (postal acknowledgments Exh. 28 and 29), demanding the compensation amount and interest thereon. Despite service of these notices, respondents did not pay the compensation amount to the claimants or did not deposit the same before the Commissioner. Therefore, the claimants are entitled to simple interest on the compensation amount @12% per annum from 25.11.2010 till the deposit of entire compensation with accrued interest thereon before the Commissioner. The respondent Nos. 1 and 2 are jointly and severally liable to pay this compensation amount and interest to the claimants. In addition to this, the respondent No. 1 is also liable to pay penalty of Rs.3,29,925/- to the claimants under Section 4-A (3)(b) of the E.C.,Act, as

there is no justification for delaying in payment of compensation. I answer question Nos. 2 and 3 accordingly.

14. In view of the above discussion, this appeal filed by claimant for enhancement of the compensation deserves to be allowed. Accordingly, First Appeal No.1284/2018 is allowed. The award passed by Commissioner for Workmen's Compensation, Jalgaon, in E.C.A.No.27/2011 is modified as under.

ORDER

"1) W.C.A. No.27/2011 is allowed with costs.

2) The opponent Nos. 1 and 2 do jointly and severally pay compensation of Rs.6,59,850/- with interest thereon @12% per annum from the date of 25.11.2010 till realization of the compensation amount.

3) The opponent No.1 shall pay penalty of Rs.3,29,925/- to the claimants under Section 4-A(3)(b) of the E.C.,Act."

15. Parties to bear respective costs of the appeal.

(SUNIL K. KOTWAL, J.)

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