

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

FIRST APPEAL NO.1285 OF 2018

1. Raosaheb s/o. Dhanraj Wagh,
Age : 53 Occu: Nil,
2. Sunandabai w/o. Raosaheb Wagh,
Age : 48 year Occu :- Nil,
3. Deepali D/o. Raosaheb Wagh,
Age : 21 year Occu: - Education
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.

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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.28/2011. 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 at the time of accident deceased was 20 years old young boy, who used to work as cleaner on the truck, the Commissioner considered his monthly salary @ of Rs.3,600/- which is reasonably inadequate. He submits that though deceased was an unskilled labour, his salary cannot be less than Rs.5000/- per month. Next contention of the learned counsel for the appellant is that the interest on compensation amount should have been awarded from the date of accident instead of date of passing of the order. His next contention is that without assigning any reason the

Commissioner declined to award penalty against the owner who did not deposit the compensation amount before the commissioner when it falls due.

5. Learned counsel for insurer submits that no substance is on record to prove the age of deceased at the time of accident. He submits that the learned Commissioner determined the probable income of the deceased at the time of accident on the basis of wages of unskilled labour under Minimum Wages Act.

6. Next contention of the learned counsel for insurer is that the learned Commissioner rightly awarded interest from the date of passing of the order.

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 amount 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 claimed that deceased used to draw monthly salary of Rs.8000/- per month. However, to substantiate this contention, neither employer is examined nor any documentary evidence is brought on record by the claimant. As owner of the offending vehicle did not file a written statement and did not appear though served, she deemed to have admitted the contention of claimants that the deceased used to work as cleaner on her truck No.GJ6/VV9753.

9. No doubt being cleaner the deceased was not skilled labour. Though tribunal observed that under Minimum Wages Act, monthly wages of unskilled labour should not be more than Rs.3,600/-. At the relevant time of evidence, no substance is placed on record by the insurer to show the minimum wages of unskilled labour under the provisions of Minimum Wages Act. Even the Commissioner did not refer any specific Government Resolution or provisions under the Minimum Wages Act to show the minimum wages of unskilled labour @ of Rs.3,600/-. In the circumstances, I have to determine notional income of the deceased on 25.10.2010 i.e. the date of occurrence of the accident and death of deceased. In **Syed Sadiq Etc. Vs. Divisional Manager,**

United India Ins. Co. reported in [2015 ALL SCR 347] , the Apex Court considered the notional income of 24 years old vegetable vendor @ of Rs.6,500/- per month, who sustained injuries in the year 2008 in motor vehicle accident. Thus, taking into consideration, this ratio, I have no hesitation to hold that deceased being 20 years young able body labour, his monthly income cannot be less than Rs.5000/- (PM notes Ex.20). Accordingly my conclusion is that at the relevant time of the death, the notional income of the deceased was Rs.5000/- per month.

10. According to the claimants, at the time of death, the deceased was 20 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-20 shows that at the time of death the age of the deceased was 20 years. Accordingly, I hold that the Commissioner did not commit mistake while holding that the deceased was 20 years old at the time of his death.

11. Under schedule IV of E.C., Act, for the age of 20 year the factor applicable is 224.00. 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.2,500/- if multiplied by relevant factor of 224.00 the amount of compensation comes to Rs.5,60,000/-. I answer question No. 1 accordingly.

12. 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 is 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

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:

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.

13. 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.

14. 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. 27 and 28), 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.2,80,000/- to the claimants under Section 4-A (3)(b) of the E.C.,Act, as there is no justification for delay in payment of compensation. I answer question Nos. 2 and 3 accordingly.

15. In view of the above discussion, this appeal filed by claimant for enhancement of the compensation deserves to be allowed. Accordingly, First Appeal No.1285/2018 is allowed. The award passed by Commissioner for Workmen's Compensation, Jalgaon, in E.C.A.No.28/2011 is modified as under.

ORDER

- "1) W.C.A. No.28/2011 is allowed with costs.
- 2) The opponent Nos. 1 and 2 do jointly and severally pay compensation of Rs.5,60,000/- 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.2,80,000/- to the claimants under Section 4-
A(3)(b) of the E.C.,Act."

16. Parties to bear respective costs of the
appeal.

(SUNIL K. KOTWAL, J.)

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