

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

901 FIRST APPEAL NO.810 OF 2002

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| <p>1] Smt.Bhimabai Dhondiram Dhanvate
Age: 27 years, Occu.: Household,
R/o. Waghwadi [jeur bejabai]
Taluka and District: Ahmednagar.</p> <p>2] Dnyandeo Dhondiram Dhanvate
Age: 5 years.</p> <p>3] Surekha Dhondiram Dhanvate
Age: 5 years.</p> <p>4] Sopan Dhondiram Dhanvate
Age: 3 years.
[No.2 to 4 being Minor represented
by Natural Guardian
Mother-Appellant No.1]</p> | <p>..Appellants
(Orig. Applicants)</p> |
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VERSUS

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| <p>1] Suryakant Sandipan More
Age: Major, Occu.: Business,
R/o. Lonikand, Tq. Haveli,
District: Pune.</p> <p>2] The New India Assurance Co. Ltd.,
307, Narayan Peth,
Opp. Vijay Talkies, Pune – 30.</p> | <p>..Respondents
(Orig. Opp.Nos.1 & 2)</p> |
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Advocate for Appellants : Shri C.K.Shinde
Advocate for Respondent No.2 : Shri V.N.Upadhye
Respondent No.1 Served.

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CORAM : P.R.BORA, J.

DATE: 25th January, 2019

ORAL JUDGMENT:-

1 Which should be the relevant date for determination of the rights and liabilities under the Employees Compensation Act, 1923, is the issue raised in the present appeal.

2 The original claimants have preferred the present appeal against the Judgment passed by the Commissioner for Workmen's Compensation at Ahmednagar in W.C.A. No.85 of 1996 decided on 29.04.1998 seeking enhancement in the amount of compensation awarded by the said authority.

3 The appellants had preferred the aforesaid application seeking the compensation under the provisions of Workmen's Compensation Act, 1923 (hereinafter referred to as the Act), on account of death of Dhondiram Nagu Dhanavate claiming the same to have been caused during the course of his employment on 12.04.1995. As was contended in the application, deceased Dhondiram was working with respondent No.1 as a driver and used to earn the salary to the tune of Rs.2,000/- per month. As was further contended in the application, age of deceased Dhondiram on the date of accident was 25 years. The applicants had therefore claimed compensation of Rs.86,764/- from the owner of the offending vehicle-cum-employer of the deceased

and insurer of the offending vehicle. The penalty and interest was also claimed. After having assessed the evidence brought on record before it, learned Commissioner for Workmen's Compensation held the appellants entitled for the compensation of Rs.86,764/- from opponent No.2 i.e. The New India Assurance Co. Ltd., with interest thereon @ 10% p.a. from the date of filing of the application till its realization. The Commissioner for Workmen's Compensation also held the appellants - claimants entitled to get penalty of Rs.30,000/- from opponent No.1 i.e. the employer of deceased within fortnight. It is also directed that if the opponent no.1 fails to pay amount of penalty within fortnight, he has to pay interest @ 10% from the date of the order till its realization. Aggrieved by the Judgment and order so passed, the original claimants have preferred the present appeal.

4 Shri C.K.Shinde, learned Counsel appearing for the appellants submitted that in view of the law laid down by the Hon'ble Apex Court in the case of **New India Assurance Co. Ltd. Vs. V.K.Neelkandan [(1999) 8 SCC 256]**, the learned Commissioner for Workmen's Compensation must have granted the compensation at the rate prevailing on the date of decision of the claim petition.

5 The learned Counsel submitted that vide Amendment Act (30 of 1995), which came into force w.e.f. 15.09.1995 the wage limit was enhanced to Rs.2,000/- per month from Rs.1,000/- per month. According to the learned Counsel, in view of the Judgment of the Hon'ble Apex Court in the case of **V.K.Neelkandan** (supra), the learned Commissioner for Workmen's Compensation must have determined the amount of compensation as per the Amendment Act (30 of 1995), which was brought into force from 15.09.1995. The learned Counsel submitted that though the accident had occurred on 12.04.1995, the application claiming compensation was filed on 17.10.1995 i.e. after coming into force the amendment vide Amendment Act (30 of 1995) and the matter was adjudicated and decided thereafter.

6 The learned Counsel further submitted that the amount of interest @ 10% p.a. has been awarded contrary to the provisions of the Act and the Commissioner for Workmen's Compensation could not have awarded the interest at the rate less than 12% p.a. It is further contended that the penalty amount granted by the learned Commissioner for Workmen's Compensation by way of lumpsum is also incorrect and appellants - claimants were entitled for 50% of the total amount by way of penalty alongwith

interest thereon. The learned Counsel in the circumstances, prayed for modification of the impugned Judgment and award and enhancement in the amount of compensation accordingly.

7 Shri V.N.Upadhye, learned Counsel for respondent No.2 submitted that the Judgment relied upon on behalf of the appellants in the case of **V.K.Neelkandan** (supra) has been set aside by the larger bench of the Supreme Court in the case of **Kerala State Electricity Board and Another Vs. Valsala K. and Another Etc.Etc. [(1999) 8 SCC 254]**. The learned Counsel submitted that in view of the law laid down by the larger bench of the Hon'ble Apex Court, the employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident, which arose out of and in the course of employment and hence, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim. The learned Counsel, in the circumstances, prayed for dismissal of the appeal.

8 I have given due consideration to the submissions made by the learned Counsel appearing for the appellants and learned Counsel appearing for respondent No.2. As I noted herein above, relying on the Judgment of the Hon'ble Apex Court in the case of **V.K.Neelkandan** (supra), it was asserted by Shri C.K.Shinde,

learned Counsel that the legal heirs of deceased Dhondiram were liable to receive the compensation at the rate prevailing on the date of adjudication of the claim petition filed by them. The learned Counsel also cited the Judgment delivered by this Court in the case of **Varsha Santosh Birajdar and others Vs. Sujata Ashok Pokharkar and another [2016 (3) All.M.R. 362]** to support his contention. However, after having perused the Judgment of the larger bench of the Hon'ble Apex Court in the case of **Kerala State Electricity Board and Another** (supra), it is revealed that the larger bench of the Hon'ble Apex Court has overruled the Judgment delivered by two Judge bench of the said Court in the case of **V.K.Neelkandan** (supra). I deem it appropriate to reproduce relevant paragraph Nos.3, 4 & 5 of the Judgment in the case of **Kerala State Electricity Board and Another** (supra), which read thus:-

"3. A four judge Bench of this Court in Pratap Narain Singh Deo V. Srinivas Sabata and Anr. (1976) 1 SCC 289 : (AIR 1976 SC 222 : 1976 Lab IC 222) speaking through Shinghal. J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation, is the date of the accident and not the date of adjudication of the claim.

4. A two judge Bench of this Court in The New India Assurance Company Limited v. V.K.Neelkandan, Civil Appeal Nos. 16904-16906 of 1996, decided on 6.11.1996, however, took the view

that Workmen's Compensation Act, being a special legislation for the benefit of the Workmen, the benefit as available on the date of adjudication should be extended to the workmen and not the compensation which was payable on the date of the accident. Two judge Bench in Neelakandan's case (supra), however, did not take notice of the judgment of the larger Bench in Pratap Narain Singh Deo's case (AIR 1976 SC 222 : 1976 Lab IC 222) as it presumably was not brought to the notice of their Lordships. Be that as it may, in view of the categorical law laid down by the larger Bench in Pratap Narain Singh Deo's case the view expressed by the two judge Bench in Neelakandan's case is not correct.

5. Our attention has also been drawn to a judgment of the Full Bench of the Kerala High Court in United India Insurance Co.Ltd. V. Alavi (1998) 1 Ker LT 951 (FB) wherein the Full Bench precisely considered the same question and examined both the above noted judgments. It took the view that the injured workmen becomes entitled to get compensation the moment he suffers personal injuries of the types contemplated by the provisions of the Workmen's Compensation Act and it is the amount of compensation payable on the date of the accident and not the amount of compensation payable on account of the amendment made in 1995, which is relevant. The decision of the Full Bench of the Kerala High Court, to the extent it is in accord with the judgment of the larger bench of this Court in Pratap Narain Singh Deo V. Srinivas Sabata (AIR 1976 SC 222 : 1976 Lab IC 222) (supra) lays down the correct law and we approve it."

9 In view of the law laid down by the larger bench of the Hon'ble Apex Court that the relevant date for determination of rate of compensation is the date of accident and not the date of adjudication of the claim, the contention raised on behalf of the

appellants is liable to be rejected. It seems that the Judgment of the larger bench of the Hon'ble Apex Court in the case of **Kerala State Electricity Board and Another** (supra) was not brought to the notice of this Court while deciding the case of **Varsha Santosh Birajdar** (supra) and the only Judgment, which was brought to the notice of the Court was in the case of **V.K.Neelkandan** (supra) and relying upon the said Judgment, it appears to have been held by this Court that the relevant date for determination of rate of compensation shall be the date of adjudication of the claim. In view of the Judgment of the larger bench of the Hon'ble Apex Court in the case of **Kerala State Electricity Board** (supra), now there has remained no doubt that the relevant date will be the date of accident and not the date of adjudication of the claim.

10 It is the further objection raised on behalf of the appellants that the learned Commissioner has erred in not awarding the appropriate penalty in accordance with the provisions of the Act. The learned Counsel submitted that 50% of the amount of compensation must have been awarded by way of penalty, whereas the learned Commissioner has awarded a lumpsum amount towards the penalty. In this regard, it is pointed out by Shri V.N.Upadhye, learned Counsel appearing for the respondent

Insurance Company that the provision under Section 4A has not been observed in the present matter. I have perused the impugned Judgment. The learned Commissioner does not seem to have issued notice to the employer under Section 4A of the Act before imposing the amount of penalty on him. Issuance of such notice was mandatory. The employer i.e. respondent No.1 has not appeared in the present appeal. In the circumstances, I do not wish to entertain the objection that amount of penalty as has been imposed by learned Commissioner is incorrect or otherwise.

11 There, however, appears substance in the objection raised as about the interest awarded by learned Commissioner. The learned Commissioner has awarded the interest on the amount of compensation from the date of filing of the application @ 10% p.a. In view of the law laid down by the Hon'ble Apex Court in the case of **North East Karnataka Road Transport Corporation Vs. Sujata (Smt.) [2018 AIR (SC) 5593]**, the learned Commissioner must have awarded the interest on the amount of compensation determined by him from the date of accident i.e. 12.04.1995 till its realization @ 12% p.a. To this extent, the impugned Judgment needs to be modified and the appeal deserves to be allowed. For the reasons stated above, the

following order is passed:-

ORDER

- I) The appellants are held entitled for the interest on the amount of compensation from the date of accident i.e. 12.04.1995 @ 12% p.a. till its realization.
- II) The impugned award be modified to the aforesaid extent.
- III) Save and except the aforesaid modification, the remaining part of the award is maintained as it is.
- IV) Appeal is partly allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

SPT