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

FIRST APPEAL NO.98 OF 2012

1. Smt. Shantabai w/o Uddhav Zanje,
   Age : 46 years, Occu. Household,

2. Ram S/o Uddhav Zanje,
   Age : 26 years, Occu. Education

   Both R/o Waghira, Tq. Ashti,
   District Beed **APPELLNTS**
   (Ori. Claimants)

VERSUS

1. The Chairman,
   Vaidyanath Sahakari Sakhar
   Karkhana Ltd., Pangri,
   Tq. Parli-Vaijnath,
   District Beed

2. The Managing Director,
   Vaidyanath Sahakari Sakhar
   Karkhana Ltd., Pangri,
   Tq. Parli-Vaijnath,
   District Beed **RESPONDENTS**
   (Ori. Respondents)

Mr. Sachin S. Deshmukh, Advocate for the appellants
Mr. J.M. Murkate, Advocate for the respondents

CORAM : SUNIL K. KOTWAL, J.

JUDGMENT RESERVED ON : 22nd APRIL, 2019
JUDGMENT PRONOUNCED ON : 29th APRIL, 2019

JUDGMENT :

This appeal is directed by the claimants in Claim Petition (Workmen's Compensation) no.1/2010, passed by the Commissioner, Employees' Compensation, Beed, dismissing the claim petition. The appellants are original claimants. The respondents are original opponents.

2. The facts leading to institution of this appeal are that the claimants are dependents of Uddhav Sadashiv Zanje (hereinafter referred as "deceased"), who used to work as Quadruple Mate in Vaidyanath Cooperative Sugar Factory Ltd., Pangri ("Sugar Factory", for short). Respondent Nos.1 and 2 are Chairman and Managing Director of the said Sugar Factory. On 9th December, 2008, when the deceased was working in Sugar Factory in the shift, in between 12.00 noon hours to 8.00 p.m., as Quadruple Mate in PAN Section, due to pressure of the work and psychological tensions, he suddenly got heart-attack and he was admitted in Sanjivani hospital at Parali.

However, he could not survive and died due to heart-attack. The deceased got heart-attack during the course of employment and due to the work pressure. Therefore, opponent Sugar Factory is liable to pay compensation to the claimants. According to claimants, at the time of death, deceased was 50 years old and he used to draw monthly salary of Rs.8950/-. Therefore, claimants are entitled to total compensation of Rs.6,88,702/- and penalty from the opponents. Despite service of notice demanding compensation, the opponents did not pay any heed to it. Therefore, claimants were constrained to file the claim petition.

3. By filing written statement (Exh-13), the opponents opposed the claim petition and specifically denied that the deceased got heart-attack during the course of employment. According to opponents, on 1st December, 2008, deceased was feeling uneasiness since morning hours and when he informed his condition to his colleagues, he was immediately shifted to

Sanjivani Hospital where he died at about 2.00 p.m. According to the opponents, there was no work pressure or tension on the deceased, on account of employment work. Therefore, the opponents are not liable to pay compensation to the claimants. As per Rules, Sugar Factory has already paid an amount of Rs.1,00,000/- to the dependents of the deceased and therefore, this petition is not tenable.

4. The Commissioner framed issues at Exh-17 and held that though deceased was in the employment of opponents, it was not proved that the deceased died during the course of employment. The Commissioner held that at the time of death, the deceased was 50 years old and his monthly salary was Rs.8950/- and claimants are dependents of the deceased. However, the claim petition was dismissed.

5. After hearing Shri Sachin S. Deshmukh, learned counsel for the appellants and Shri J.M. Murkute, learned counsel for the respondents, following substantial question of law arises for

my consideration.

> "Whether the claimants are entitled to compensation and penalty from the opponents under the Employees' Compensation Act, 1923?"

6. Learned counsel for the appellants submits that in the case at hand, though by examining Dhairyashil Kale (PW1), the claimants have proved that while working as Quadruple Mate in the Sugar Factory, the deceased was under heavy pressure of work and responsibility, the Commissioner erroneously held that the deceased did not die during the course of employment. Relying on the evidence of Dr. Balasaheb Karad (PW3), he has submitted that there was no previous history of heart-attack or symptoms of B.P. or Diabetes in the case of deceased and therefore, only `work pressure' was the cause behind the death of the deceased when he was working in the Sugar Factory. Learned counsel for the appellants submits that considering the

undisputed monthly income of the deceased and total inaction on the part of opponents regarding payment of compensation to the claimants, the claimants are entitled to compensation together with interest at the rate of 12% per annum from the date of death of the deceased as well as penalty of 50% of the compensation amount under Section 4-A of the Employees Compensation Act, 1923 ("EC Act", for short). To substantiate his contentions, he placed reliance on the judgments in the cases of "***Zubeda Bano Vs. Maharashtra State Road Transport Corporation***" [***MHLR 1990 (2) 681 (DB)***] and "***Subhadra Bai and others Vs. Maharashtra State Road Transport Corporation***" (***2005 ACJ 1574***).

7. Learned counsel for the respondents supported the judgment passed by the Commissioner on the ground that absolutely no evidence is on record, which is sufficient to establish even casual relation in between heart-attack of the deceased and his employment. He

submits that as nexus in between death of the deceased due to heart-attack and his employment is not established, the claimants are not entitled to compensation.

8. In the case at hand, the Commissioner has given finding that the deceased used to work as employee in the Sugar factory of the respondents and his monthly salary was Rs.8950/- as well as his age was 50 years at the time of death. The Commissioner also held that the claimants are the dependents of the deceased. Against that finding, no cross-objection is filed by the respondents. Thus, this finding has attained finality.

9. Under Section 3 of the EC Act, the employer is liable to pay compensation to the employee or to the dependents of the employee if personal injury is caused to an employee by accident arising out of and in the course of employment. In the case at hand, admittedly, the deceased was the employee of the respondent Sugar Factory and on 1st December, 2008, the

deceased was on duty in the shift from 12.00 noon hours to 8.00 p.m. Even from the evidence of Prakash Mundhe (DW1), examined by the respondents, it emerges that on 1st December, 2008, the deceased attended the Sugar Factory to join his duties since 12.00 noon hours. The contention of Prakasah Mundhe (DW1) is that on the date of occurrence, since morning the deceased felt uneasiness. However, Prakash Mundhe (DW1), who is one of the employees of Sugar Factory, is not expected to tell as to what was the condition of the deceased in the morning hours as he is not family member of the deceased.

10. On the other hand, Smt. Shantabai Zanje (PW1), who is the wife of the deceased, has made it clear that her husband died due to heart-attack when he was on duty on 1st December, 2008. This witness has specifically denied that on the date of occurrence, since morning hourse, the deceased had chest pains. Shantabai (PW1) being wife of the deceased is the proper person who

can depose regarding condition of the deceased since morning hours on the date of occurrence. In the circumstances, on the basis of evidence of Prakash Mundhe (DW1), it cannot be held that on 1st December, 2008, since morning the deceased was feeling uneasiness and he was not in a position to do work in the Sugar Factory.

11. The respondents have also examined Dnyanoba Sanap (DW2), who used to work as Chief Chemist in the Sugar Factory, who deposed that from the other employees of the Sugar Factory, this witness came to know that on 1st December, 2008, since morning, the deceased was uneasy. However, no other colleague of the deceased is examined by the respondents to prove that on the date of occurrence, since morning the deceased had uneasiness or chest pains. Dnyanoba Sanap (DW2) has tried to bring on record altogether different theory that on 1st December, 2008, the Sugar Factory was closed as adequate sugarcane was not available. However, for lack of pleading to that effect, such theory is not

acceptable and even the Commissioner has rightly discarded this contention.

12. Thus, on the basis of evidence of Shantabai (PW1) and above referred admitted facts in between the parties, the claimants have duly proved that on the date of occurrence, the deceased was on duty in the Sugar Factory and that time, he sustained heart-attack.

13. According to claimants, due to pressure of the work, deceased sustained heart-attack. Shantabai (PW1) has also made statement before the Commissioner that as Quadruple Mate, it was the responsibility of the deceased to set parameter, control temperature, control steam pressure, control vacuum in the Sugar Factory. Even Dhairyashil Kale (PW2), who works as Manufacturing Chemist in another Sugar Factory, has brought on record that the work of Quadruple Mate is skill work i.e the job of responsibility. Even Prakash Mundhe (DW1) has admitted that the deceased used to work as Quadruple Mate in the Sugar Factory and he was

dealing with boiling of sugarcane juice and other process, which is the work of responsibility. Even Dnyanoba Sanap (DW2) has admitted same responsibility of the deceased in the Sugar Factory. After considering the work and responsibility of the deceased in the Sugar Factory, one can easily gather that the deceased was performing the task of responsibility in the Sugar Factory and certainly, there would be psychological pressure on the deceased. Even from the testimony of Dr. Balasaheb Karad (PW3), it emerges that stress, workload and excess strain can be the reasons for heart-attack, apart from over weight, obesity, high cholesterol and smoking. From the cross-examination of Dr. Karad (PW3), it has been brought on record that the deceased had no previous history of heart-attack or symptoms of B.P. and Diabetes. Even from the cross-examination of Shantabai (PW1), it becomes clear that the deceased was neither smoker nor addicted to any vices. In the circumstances, except mental stress due to work of responsibility, there was no other cause for sustaining the heart-attack by the deceased. The Division Bench of this Court in "***Zubeda Bano Vs. Maharashtra State Road Transport Corporation***" (supra), has made clear the legal position that heart injury when brought about by a strain due to the work in the employment is compensable. In that case, this Court has considered the observations of Full Bench of Assam High Court in "***Assam Railways and Trading Co.Ltd. Vs. Saraswati Devi" [(A.C.J. 1958 (66) Page 394]***, which is reproduced as under :-

> *"Even in cases where a person has been suffering from heart disease, if the nature of the work has contributed to the deterioration of the heart and his death, the personal injury can be said to arise out of his employment. The case where the deceased was not suffering from any previous heart disease, is to my mind a stronger case and in such circumstances if he suddenly gets a heart attack while proceeding to perform his duty, the accident can be nothing but arising out*

of his employment."

14. In view of the observations of Full Bench of Assam High court, which is also followed by Division Bench of this Court, when deceased had no previous history of heart disease and when he suddenly gets heart-attack while performing his duty in the Sugar Factory, the said occurrence must be considered as accident arising out of his employment. Even in "***Subhadra Bai and others Vs. Maharashtra State Road Transport Corporation***" (supra), this Court after considering various judgments of High Court and judgment of Division in "***Zubeda Bano Vs. Maharashtra State Road Transport Corporation***" (supra), made it clear that death by heart-attack is an accident.

15. In view of above discussed legal position and evidence on record, I have no hesitation to hold that as the deceased suddenly got heart-attack when he had joined his duty in the Sugar Factory, only one conclusion can be

drawn that the deceased sustained personal injury by accident arising out of and in course of his employment. Therefore, under Section 3 of the EC Act, the respondents – employer is liable to pay compensation to the claimants.

16. Undisputedly, as permanent employee of the respondents, deceased used to draw salary of Rs.8950/- per month and at the time of his death, he was 50 years old. Therefore, under Schedule-IV of the EC Act, the relevant factor applicable is 153.09. Under Section 4 (1) (a) of the EC Act, in case of the death, the compensation amount shall be equal to 50% of the monthly wages of the deceased (employee), multiplied by relevant factor. Thus, the amount of compensation payable to the claimants is to be calculated by multiplying the half of the monthly wages of the deceased by relevant factor of 153.09. The half monthly wages of the deceased comes to Rs.4475/- and if it is multiplied by relevant factor 153.09, the compensation amount comes to Rs.6,85,078/-

(i.e. Rs.4475/- x 153.09).

17. Under Section 4-A (1) of EC Act, compensation under Section 4 shall be paid as soon as it falls due. 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 falls due from the date of personal injury caused to the workman and not from the date of Commissioner's order. The claimants have proved that after the death of the deceased, they served notice (Exh-28) to the respondents on 12th November, 2009. Despite service of this demand notice of compensation, the respondents did not pay the compensation amount to the claimants. Therefore, under Section 4-A (3) (a), the claimants are entitled to simple interest on compensation amount at the rate of 12% per annum from one month after the date of death of the deceased i.e. from 1st January, 2009 till realization of the compensation amount.

18. As the respondents did not assign any

reason for delay in payment of compensation, despite service of notice to them, the claimants are also entitled to penalty under Section 4-A (3) (b) of the EC Act, not exceeding 50% of the amount of compensation. Thus, the claimants are also entitled to penalty of Rs.3,42,539/-.

19. Accordingly, my conclusion is that the claimants are entitled to compensation of Rs.6,85,078/- with interest thereon at the rate of 12% per annum from 1st January, 2009 till realization of this compensation amount and respondents are liable to pay this compensation to the claimants. The claimants are also entitled to penalty of Rs.3,42,539/- from the respondents. I answer the substantial question of law in the affirmative and proceed to pass the following order :-

20. First Appeal No.98 of 2012 is allowed. The judgment and award passed by the Commissioner, Workmen's Compensation, Beed in Petition No.1/2010 is set aside and instead, following award is passed :-

“(i) Claim Petition is allowed with cost.

(ii) Opponent Nos.1 and 2 do pay jointly and severally compensation of Rs.6,85,078/- to the claimants with interest thereon at the rate of 12% per annum from 1st January, 2009 till realization of the compensation amount.

(iii) Claimants are also entitled to penalty of Rs.3,42,539/- from opponent Nos.1 and 2.

(iv) Deficit court fees, if any be recovered from claimants.

(v) Award be drawn accordingly.”

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

22. The appeal is disposed of accordingly.

[SUNIL K. KOTWAL]
JUDGE

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