

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

First Appeal No.772/2019
with
Civil Application No.3197/2015

The New India Assurance Co. Ltd. Appellant
Vs.
Swarna Singh s/o. Mohan Singh & Ors. Respondents

Mr. D. R. Mahadik for the Appellant
Mr. T. J. Mendon for Respondent Nos.1 and 2.

CORAM : K.K.TATED, J.
DATED : JULY 31, 2019

P.C.

1 Heard. By this First Appeal, the Appellant challenges the judgment and award dated 19.12.2013 passed by the Commissioner for Employees Compensation and Judge, 9th Labour Court, Mumbai in Application (WCA) No.736/B/136/2007 holding that the Respondent - Claimant is entitled to sum of Rs.4,33,820/- by way of compensation with interest.

2 The learned counsel for the Appellant submits that the Labour Court has erred in coming to the conclusion that the Respondent - Claimant proved that the employee - employer relationship was between the deceased and Mr. Swaroop Singh Dilip Singh the original opposite party. He submits that even the Labour Court has erred in coming to the conclusion that the Respondent - Claimants are entitled to compensation of Rs.4,32,820/-. He submits that the

Respondent has failed to place on record any documentary evidence to show that the deceased was drawing monthly salary @ Rs.4000/- pm. Hence, the impugned judgment and award is liable to be set aside.

3 On the other hand the learned counsel for Respondent Nos.1 and 2 has vehemently opposed the First Appeal. He submits that the present appeal is filed by the Insurance Company u/s.30 of the Workmen's Compensation Act. He submits that u/s.30 of the said Act, the Appeal is maintainable only on the ground of question of law. He submits that the Appellant has not shown any substantial question of law in the First Appeal. He submits that the objection raised by the Appellant about the employer employee relationship and to prove the salary cannot be treated as question of law. In support of this contention, he relies on ***North East Karnataka Road Transport Corporation Vs. Sujatha 2019 ACJ 29***. paragraph 9 to 11 read thus:

9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of the material issues which

arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue/s his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.

11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lie only against the specific orders set out in clause (a) to (e) of Section 30 of the Act with a further rider contained in first proviso to the Section that the appeal must involve substantial question of law.

4 The apex court has held that if question of law is not involved same cannot be entertain u/s.30 of the Workmen's Compensation Act.

5 On the basis of this submission, the learned counsel for the Respondent-Claimant submits that there is no substance in the First Appeal. Same is liable to be dismissed summarily.

6 In the present proceedings in an accident which occurred on 01.09.2005 Mr. Gurudit Singh expired. At that time he was 23 years old and was working with original opponent on monthly salary of Rs.4000/-. On the basis of the pleadings, the Trial Court framed the following issues:

ISSUES	FINDINGS
1. Whether Applicants prove that there exists employer-employee relationship between the deceased Mr. Gurdit Singh s/o. Swapna Singh and opponent No.1?	In affirmative
2. Whether the Applicants prove that deceased met with an accident on 01.09.2005 while on duty as a driver during the course of arising out of employment ?	In affirmative
3. Whether Applicants prove that, the deceased was 23 years of age and was drawing the salary of Rs.4,000/- p.m. from opponent No.1?	In affirmative
4. Whether the Applicants are entitled for compensation as claimed ?	In affirmative
5. Whether the Applicants prove that, they are entitled for interest and penalty? If yes, then to what extent ?	Order
6. What order ?	As per final order

7 The Labour Court has specifically held that the claimants proved relationship of employer and employee of the deceased and the Respondent. Moreover, the Labour Court, after considering the evidence on record about the monthly salary of the deceased held that the claimants are entitled to sum of Rs.4,32,820/- towards compensation with

interest. Bare ready of the impugned judgment and appeal memo clearly shows that the Appellant has failed to make out any question of law involved in the appeal.

8 Apart from that considering the apex court judgment in the matter of supra ***North East Karnataka Road Transport Corporation Vs. Sujatha 2019 ACJ 29*** it is crystal clear that the question of employer and employee and/or monthly salary cannot be a question of law.

9 In view of these facts, I do not find any substance in the First Appeal.

10 Hence, the First Appeal stands rejected summarily.

11 In view thereof, nothing survives in the Civil Application. Same stands rejected.

(K.K.TATED, J.)