

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1463 OF 2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Aditi Athavale i/b Yogita Deshmukh for the Appellant.

**CORAM: K.K.TATED, J.
DATED : OCTOBER 15, 2019**

P.C.

1 Heard.

2 By this First Appeal, the Appellant-Insurance Company is challenging the Judgment and award dated 20/12/2017 passed by the Commissioner for Workmen Compensation and Labour, Mumbai in Application (WCA) No. 330/B-64/2013 holding that the Respondents/Original Claimants are entitled compensation of Rs. 8,90,840/-.

3. In the present proceeding in the accident, which occurred on 11/01/2013, the Respondents/Original Claimants lost their son namely Samrat Khurshid Alam Fulbas Sheikh. On the date of accident, he

was 20 years old and was earning a sum of Rs. 8,000/- per month. On the basis of the evidence on record the Tribunal held that the Respondents are entitled a sum of Rs.8,90,840/- by way of compensation.

4. The Learned Counsel for the Appellant submits that by this First Appeal under Section 3 of the Employees compensation Act, 1932, they are challenging the Judgment and award on three grounds:

- a. Breach of terms and conditions of insurance policy.
- b. Quantum.
- c. Relationship of Employer and Employees.

5. The Learned Counsel for the Appellant submits that, the Tribunal failed to consider the fact that, as per Insurance Policy the interest of Laborers, earning salary Rs. 2,250/- per month only were covered. The deceased was earning amount of Rs. 8,000/- per month. Therefore, the impugned Judgment and award passed by the Tribunal is required to be set aside.

6. Bare reading of the entire Judgment shows that first issue was not raised by the Appellant before the Learned Commissioner.

Therefore, there is no question of considering this point in the First Appeal. The second issue raised by the Advocate for the Appellant is that, the Tribunal has awarded the compensation on higher side. This cannot be considered as a question of Law. Therefore, there is no question of entertaining the First Appeal on this point also.

7. The Learned Counsel for the Appellant submits that, the Original Claimants failed to disclose the documentary evidence to show the Employer and Employee's relationship of deceased and the Respondent with whom the deceased was working. The Learned Counsel for the Appellant relied on the statement in Appeal memo. Bare reading of the said grounds does not show any question of Law in the present First Appeal.

8. It is to be noted that, in the present proceeding, the Claimants entered into witness box and stated that the deceased was working with the Original Respondent. Therefore, this cannot be considered as a question of Law. On this point reference can be made to the Apex Court Judgment in the matter of *North East Karnataka Road*

Transport Corporation v. Sujatha¹ held that Appeal under the said Act lies only on substantial question of law. Paragraph 9, 10 and 11 reads 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 afore-mentioned 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.

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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(1) of the Act with a further rider contained in first proviso to the Section that the appeal must involve substantial question of law.”

9. Considering the submissions made by the learned counsel for the Appellant and the facts on record and on the basis of judgment of Apex Court in the matter of ***North East Karnataka Road Transport Corporation v. Sujatha*** (Supra), I am of the opinion that appellant failed to make out any substantial question of law involved in the present First Appeal. Hence, following order is passed :

- a. First Appeal stands dismissed.
- b. No order as to costs.

(K.K.TATED, J.)