

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

FIRST APPEAL NO. 1711 OF 2009

1. Tulshiram s/o Kisan Kad
Age: 46 years, Occu: Labour,
R/o Tondapur, Tq. Kalamnuri,
District: Hingoli
 2. Sow Sulochana w/o Tulshiram Kad
Age: 41 years, Occu: Household,
R/o: As above
- ... Appellants
(Orig. Petitioners)

Versus

1. Gopal s/o Balaji Kshirsagar
Age: 42 years, Occu: Business,
R/o. New Mondha, Nanded
(Truck Owner Bearing No. MH 26, H 5444)
 2. United India Insurance Co. Ltd.,
Through its Branch Manager,
Dayawan Complex, Station Road,
Parbhani, Tq. & District: Parbhani
- ... Respondents

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Mr. P S. Agrawal, Advocate for appellants
Mr. B. N. Gadgaonkar, Advocate for respondent No.1
Mr. V. R. Mundada, Advocate for respondent No.2

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CORAM : R. G. AVACHAT, J.

DATED : 16th SEPTEMBER, 2021

PER COURT :-

. This is an appeal under Section 30 of the Employee's Compensation Act, 1923 (for short 'E.C. Act'). The appellants herein are the parents of the deceased Gajanan, who died as a result of

injury suffered during the course of his employment as a Cleaner on the truck bearing No. MH-26/H-5444, belonging to respondent No.1 herein.

2. The learned Commissioner considered the notional income of the deceased at Rs.1500/- per month and granted compensation of Rs.1,68,915/- with interest at the rate 6% per annum from the date of the impugned award, only in case of default in making the payment of compensation within one month. The employer (respondent No.1 herein) has also been directed to pay 50% of the amount of compensation towards penalty with 12% interest thereon from the date of the accident to the date of payment. The appeal has been filed for enhancement of the amount of compensation.

3. Heard. Perused the impugned award and the relevant evidence. Considered the rival submissions.

4. Admittedly, deceased Gajanan died due to injury suffered in the course of and arising out of his employment as a Cleaner on the truck belonging to respondent No.1 herein. It was the case of the appellants/claimants that the salary of the deceased was

Rs.4,000/- per month. Respondent No.1 employer, however, came with the case that he would pay the deceased salary of Rs.1,500/- per month. Both the appellants and respondent No.1, however, did not have evidence in support of their claims. In the year 2008, the rate of daily wages of an unskilled labour was Rs.103.63/-. The Commissioner ought to have considered the same for awarding just compensation. The Commissioner has also erred in awarding interest at the rate 6% per annum on the amount of compensation that too if the same is not paid within one month from the impugned order, then therefrom only. It is now well settled that the amount of compensation falls due as soon as mishap take place. In case of default of payment of compensation when it was due, the amount of compensation has to carry interest at the rate 12% per annum.

Section 4-A(3) of the E.C. Act, 1923, reads as under:-

“(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall -

(a) direct that the employer shall, in addition to the amount of the 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.”

5. The impugned award therefore needs to be modified, enhancing the amount of compensation considering the notional income of the deceased at Rs.3,000/- per month. The appeal, therefore, succeeds. The impugned award is therefore modified as under:-

- (i) Both the respondent No.1 – employer and respondent No.2 – Insurance Company, do jointly and severally pay the petitioners Rs.3,37,870/- with 12% interest thereon from the date of application to the date of actual payment.
- (ii) The respondent No.1 – employer shall further pay 50% of the amount of aforesaid compensation towards penalty with 6% interest thereon from the date of application to the date of payment.

[R. G. AVACHAT, J.]