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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL ST. NO. 1343 OF 2020
WITH
INTERIM APPLICATION NO. 815 OF 2020

Bharti Axa General Insurance Co Ltd ...Appellant
Versus
Smt. Nilofar Junaid Shaikh ...Respondent

INTERIM APPLICATION NO. 3832 OF 2021

Smt. Nilofar Junaid Shaikh & Anr ...Applicants
Versus
Bharti Axa General Insurance Co. Ltd. ...Respondent

Mr. Nikhil Mehta, i/b KMC Legal Venture, for the Appellant & Applicant in IA/815/2020.

Mr. B.V. Kamble, for the Respondent & Applicants in IA/3832/ 2021.

CORAM: Smt. Bharati Dangre, J.
DATED: 7th December 2021

P.C.:-

1. The Appeal is circulated for hearing of Interim

Application No. 3832 of 2021 under which the Claimants have sought withdrawal of the amount which has been deposited by the Appellant in this Court, pursuant to order granting stay to the effect, operation and execution of the impugned judgment. However, the learned Counsel for the Appellant and the Respondent concede that since a very brief point arise in this Appeal, it can be decided at this stage and since they have advanced their submissions on the merits of the Appeal, I am inclined to hear the same finally.

2. One Junaid Mohammad Jalil Shaikh was employed as a driver with Opponent No. 1 on a auto rickshaw belonging to him. On 19.01.2015 when Junaid was driving the auto rickshaw and proceeding towards Thane, the vehicle dashed a divider and he sustained injuries and died on the spot. The accident was reported to Kasarwadawali Police Station.

3. His widow and minor son filed Application (WCA) No. 398/B-87/2016 under the Employees' Compensation Act, 1923 claiming compensation for death of Junaid. The compensation claimed was Rs. 7,97,600/-, and it was based on the premise that at the time of the death the deceased was aged 34 years and he was earning salary of Rs. 8,000/- per month. Despite the knowledge of the accident, since the amount was not deposited by the owner of the vehicle as well as the insurance company, i.e. Opponent No. 2, with whom the vehicle was insured, a claim was staked for interest at the rate of 12% and imposition of penalty of 50% of the amount to be awarded.

4. The Opponent No. 1, though served, did not put his appearance. Resultantly, the Commissioner/Second Labour Court, Thane proceeded ex parte against him. The insurance company filed its written statement and seriously contested the claim, on the ground of maintainability of the application, denying the employer-employee relationship between the deceased and Opponent No. 1 for want of any document. The salary and age was also disputed. Defence is also taken to the effect that the driver of the auto rickshaw involved in the accident was not having a valid and effective license when the accident took place.

5. Upon consideration of the contest raised by Opponent No. 2, the learned Commissioner framed the following issue for his determination.

> "Whether at the time of accident in question the deceased workman was working as a driver and died therein?"

6. The said question has been answered in the affirmative based on the material placed before him. The Applicant No. 1 filed evidence affidavit. The Opponent No. 1 failed to adduce evidence and, therefore, no evidence order was passed against the insurance company. The Applicant No. 1 stepped into the witness box and deposed that her husband died in the course of employment when he was serving as a driver with Opponent No. 1 and was driving auto rickshaw No. MH-04-BC-6846. She has placed on a record certified copy of the F.I.R., copy of death certificate. Based on the said certificates, the learned Judge concluded that the accident occurred on 19.01.2015 during the course of employment and the deceased succumbed in the said accident. The employer-employee relationship, though contested by the insurance company, the employer never contested the same. In the absence of any evidence being led to the contrary, on the evidence which was brought on record through the Applicant No. 1, the accident was held to have occurred in the course of employment.

While determining the issue as to what was the age and salary of the deceased workman at the time of accident, again since there was no cross-examination on the part of Opponent No. 2, the statement of the Applicant No. 1 who deposed on oath that age of deceased was 34 years and was accepted as the xerox copy of the driving license and Aadhar card was placed on record, which recorded the date of birth as 26.03.1982. The learned Judge recorded that the deceased was 32 years, when he met with accident. As far as the averment about his salary to be Rs. 8,000/- per month being paid to him by the Opponent No. 1, though she has not produced any document to that effect, recording that she was the best person to depose about his salary since she was his wife and since no contradictory material is brought on record, the salary is accepted to be Rs. 8,000/-.

7. Apart from this, the learned Judge referred to the insurance policy taken by the Opponent No. 1 which was valid at the time when the accident took place and in the aforesaid circumstances the employer and being the insurer, Opponent Nos. 1 and 2 were jointly and severally held liable to pay the amount of compensation. The compensation was arrived at Rs. 7,97,600/- with the following calculation being worked out:

> "The age relevant factor for 34 years is 199.40.
> The monthly salary is Rs. 8,000/- per month.
>
> = 50% of monthly salary X 199.40
>
> = 4000 x 199.40
>
> = Rs. 7,97,600/-."

8. Since there was a delay in payment of the compensation, interest at the rate of 12% per annum along with penalty in the sum of 50% on the compensation amount is also directed to be paid. The application of the Claimants was allowed and they were also entitled to Rs. 7,97,600/-

along with interest and the amount of penalty.

9. From perusal of the aforesaid judgment since the Opponent No. 1 did not contest the claim under the Workmen's Compensation Act, 1923 and did not dispute the employer-employee relationship as claimed by the Claimants in the Compensation Application and even the salary which is brought on record through the Applicant is not disputed by the employer, and it is not even contested by bringing any cogent evidence on record by the insurance company, I do not think it is open for the insurance company to challenge the said judgment under which the compensation has been awarded to the Claimants on the said count.

10. The Commissioner for Employees' Compensation has invoked the principle of compensation which is to be mechanically arrived at under the provisions of the Workmen's Compensation Act, which take into account two factors, being the age of the deceased and earning capacity. Based on the formula as provided in Section 4(1) of the Workmen's Compensation Act, the amount of compensation has been arrived at and since it is accepted that there is delay in making the compensation, interest and penalty has also been levied.

11. I see no legal infirmity in the impugned judgment which deserves to be upheld. The First Appeal is dismissed.

Consequently, Interim Application No. 815 of 2020 is infructuous and is disposed of as such.

Needless to state that upon the Appeal being dismissed, the Claimants are entitled to withdraw the entire decretal amount that is deposited by the insurance company before the Commissioner/Second Labour Court. No orders are, therefore, necessary on Interim Application No. 3832 of 2021.

(**Smt. Bharati Dangre, J.**)