

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

FIRST APPEAL NO.650 OF 2003

M/s New India Assurance Co.Ltd.
Having its Registered and Head Office
at New India Assurance Building,
M.G. Road, Fort, Bombay 40023 and
Divisional Office at Adalat Road,
Aurangabad and branch at Parbhani
through its Divisional Manager and
Constituted Attorney Shri Syed
Khaleel s/o Sayed Chand

Appellant

Versus

1. Prabhu Dadarao Katare
Age : 28 yrs, occ : labourer
R/o Manwath, Tal. Pathri,
District Parbhani

2. Vijakumar Bapurao Katruwar
Age : major, occ : business
R/o Manwath, Tal. Pathri,
District Parbhani

Respondents

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Mr. V.N. Upadhye, Advocate for the appellant.

Mr. E.P. Sawant, Advocate for respondent No.1.

Mr. S.G. Rudrawar, Advocate for respondent No.2.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 4th July 2023.

Oral Judgment :-

1. Heard rival submissions. The appellant - Insurance Company, who was original respondent No.2 in WCA No. 2/1993, has challenged the judgment and award in that

application, dated 18.07.1994 passed by the learned Civil Judge (Senior Division) and Ex-Officio Commissioner (hereinafter referred to as the “learned Commissioner”) awarding compensation of Rs.64,573/- inclusive of penalty and interest at the rate of 6% per annum.

2. It appears that the appellant - Insurance Company has filed this appeal only on the limited ground that the learned Commissioner has assessed the compensation by adopting wrong method of calculation. The learned Counsel for the appellant - Insurance Company has submitted that though the learned Commissioner adopted proper relevant factor i.e. 211.70 and half pay of claimant i.e. Rs. 300/-, but wrongly calculated the compensation amount as Rs. 95,306/- by adding 50% penalty. The percentage of disability sustained by the respondent No.1 – claimant to the extent of 37 % is not at all disputed, and therefore, the calculation made by the learned Commissioner of Rs. 69,573/- i.e. 37% of Rs.95,306/-, is apparently erroneous. 37% of the aforesaid amount in fact comes to Rs.35,263.22/-. As such, the learned Commissioner has erred in computing the amount of compensation.

3. The learned Counsel for the appellant - Insurance Company, by relying upon the judgments of this Court in the

cases of *New India Assurance Co. Ltd. vs Mohan Bhanudas Bansode, 2005 (4) Mh.L.J. 158* and *New India Assurance Co. Ltd. vs Lilabai Baban Somase, 2008 (5) ALL MR 582*, has submitted that penalty cannot be imposed upon Insurance Company. On going through judgments, it appears that this observation has come on record in the light of observation of Apex Court in the case of *Vedprakash Garg vs Premi Devi and others* reported in *1998 (4) ALL MR 517*. This observation of Hon'ble Apex Court has been followed in number of subsequent judgments, and therefore, it is now settled that the Insurance Company is not liable to pay amount of penalty under the provisions of Employee Compensation Act. As such, I have to calculate the amount of compensation and amount of penalty separately.

4. On such calculation, the amount of compensation, by applying relevant factor and the half pay of the claimant, comes to Rs. 63,537/- (211.79 x 300). Since the claimant has suffered from permanent disability to the extent of 37%, the amount of compensation to the extent of that percentage of disability comes to Rs. 23,508.69 which can be rounded as Rs.23,509/-. Further, the penalty under Section 4A of Workmen's Compensation Act needs to be calculated on the

amount of compensation as aforesaid. Therefore, the penalty amount at the rate of 50% on the amount of compensation comes to Rs. 11,754/- which is to be borne by the employer i.e. present respondent No.2 as per the observation of Hon'ble Apex Court in the aforesaid judgment. Further, the expenses as regards the medical treatment of the claimant of Rs.5,000/- incurred by respondent No.2 employer need to be deducted from the amount of penalty as per observation of learned Commissioner in the judgment itself. As such, the amount of penalty is now reduced to Rs.6,754/-. There is no dispute in respect of the interest part awarded by the learned Commissioner and it appears reasonable. The learned Counsel for the Appellant Insurance Company submits that the Insurance Company has already deposited the compensation amount of Rs. 64,573/- with learned Commissioner alongwith the amount of Rs. 7,652/- on account of interest part under protest and the same amounts are still lying there. In view of the same, the impugned judgment and award needs to be modified and therefore, following order is passed.

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellant and respondent No.2 shall jointly and severally pay compensation of

Rs.23,509/- alongwith the interest at the rate of 6% per annum to the respondent No.1 – claimant from lapse of one month after the date of accident till it's realization.

- (iii) The respondent No.2 in addition to the aforesaid amount shall pay amount of Rs. 6,754/- alongwith the interest at the rate of Rs. 6% per annum to the respondent No.1 claimant from the date of petition till it's realization.
- (iv) The amount of payment of Rs. 23,509/- alongwith the interest at the rate of 6% per annum from lapse of one month after the date of accident till it's realization be paid to the respondent No.1 - claimant from the amount which is already deposited by the appellant Insurance Company with learned Commissioner on account of compensation + interest part and the remaining amount, if any, be refunded to the appellant Insurance Company alongwith the interest accrued thereon.
- (v) The award be modified and drawn accordingly.
- (vi) The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)