

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 856 OF 2002

M/s New India Assurance Co. Ltd.
having its Regd. And Head Office at
87, M. G. Road, Mubai 400 001.
Branch office at Shivaji Chowk
Naik Nivas, Osmanabad and
Divisional Office, Ajay Engg. Complex
Dr. Rajendra Prasad Road,
Aurangabad 431 005 through its
Divisional Manager & Constituted
Attorney Mr. Namdeo Gangaram Mali
aged about 49 years, occ. service

Appellant

Versus

1. Mahamulal s/o Mahabuddin Yengure
age 55 years, occ. Labourer
r/o Alur, Tq Omerga,
Dist. Osmanabad
2. Kulsumbee w/o Mahamulal Yengure
aged about 50 years, occ. Household
r/o as above.
3. Mr. Sangappa s/o Kalyani Vhatte
Major, occ. Agril,
r/o Alur Tq. Omerga, Dist. Osmanabad

Respondents

Mr. V. N. Upadhye, Advocate for the appellant.
Mr. V. C. Solshe & S. S. Tathe, Advocates for respondents No. 1 and 2.

CORAM : R. M. JOSHI, J.
RESERVED ON : 6th FEBRUARY, 2023.
PRONOUNCED ON : 27th FEBRUARY, 2023.

JUDGMENT :

1. Being aggrieved by the judgment and award dated 10th July, 2002, passed in W.C.A. No. 9/2000 by the learned Commissioner, Workmen's Compensation Act, original respondent No. 2-M/s New India Assurance Co. Ltd. has preferred this appeal under Section 30 of the Workmen's Compensation Act, 1923 (for short 'Act').

2. The respondents No. 1 and 2 were the applicants whereas the appellant-insurance company and respondent No. 3-insured were the respondents No. 1 and 2 respectively in the claim proceedings before the learned Commissioner, Workmen Compensation Act and Civil Judge Senior Divisions, Osmanabad and shall be hereinafter referred to as the applicants and respondents No. 1 and 2 respectively.

3. The facts giving rise to the present appeal can be summarised as under :-

The respondent No. 1 is the owner of a Tractor bearing No. MH 25 B 3031, which was duly insured with respondent No. 2-

insurance company. The respondent No. 1 had engaged the deceased Ismail as a driver, on payment of monthly wages of Rs. 3,000/- plus bhatta of Rs. 50/- per day. The tractor met with an accident on 3rd February, 2000 resulting in death of the driver-Ismail. The applicants, the parents of the deceased Ismail, claim to be the dependents and filed an application under Section 10 of the Workmen's Compensation Act, seeking compensation of Rs.3,00,000/- from the respondents being the insured and the insurer of the vehicle involved in the accident.

3. The respondent No. 1 admitted that he had engaged Ismail as a driver. He, however, denied paying Rs.3,000/- per month and daily bhatta Rs.50/- to deceased Ismail and contended that deceased was paid salary of Rs. 900/- per month. Respondent No. 1 also did not dispute that Ismail had died as a result of the injuries sustained in the course of the employment. Respondent No. 1 claim that the vehicle was duly insured and hence respondent No. 2 is liable to pay compensation to the applicants.

4. Respondent No. 2 contested the claim by filing written statement at Exhibit 22 thereby denying the contents of the

application. It is contended that the deceased was never employed by respondent No. 1 and was not holding a valid driving licence for driving said tractor. This respondent disputed its liability to indemnify the respondent No. 1-insured for breach of terms and conditions of insurance policy.

5. Learned Commissioner framed issues vide Exhibit 23 and recorded evidence led before it. By the impugned judgment and award the application came to be allowed with direction to respondents No. 1 and 2 to jointly and severally pay compensation of Rs. 3,00,000/- to the applicants along with interest at the rate of 12% per annum from the date of filing of the application till realisation of the entire amount. While arriving at the said finding, it is held that both the sides have failed to place on record driving licence of the deceased and hence an inference was drawn that the deceased was holding a driving licence on the date of the accident. As far as amount of compensation is concerned, evidence of applicants about deceased Ismail receiving wages of Rs.3,000/- per month came to be accepted as there was no rebuttal to the said evidence from respondents. Thus, with these findings, the learned

Commissioner had granted compensation to the applicants along with interest.

6. Present appeal is filed by respondent No. 2-Insurance Company predominantly on two grounds i.e. breach of condition of the policy as deceased was not holding valid driving licence for driving the tractor and that the learned Commissioner has committed error in considering the amended provisions of the Act for the purpose of grant of compensation by applying the same retrospectively.

7. Learned counsel for the appellant/original respondent No. 2 submitted that since the burden was on the applicants to prove that deceased was holding valid driving licence to drive the tractor, in absence of any evidence being adduced, the learned Commissioner is not justified in recording finding that there is a presumption about driving licence being held by the deceased at the relevant time. He further argued that by virtue of explanation to Section 4 of the Act, the maximum amount of wages which could have been taken into consideration by the Commissioner for computation of compensation was Rs.2,000/- per month and not Rs. 4,000/- per month, increased

by virtue of amendment Act 46/2000 dated 8th December, 2000. According to him, it was not open for the Commissioner to consider the said amount as the amended provisions would have applied prospectively and it cannot relate back to the date of accident.

8. Learned counsel for original claimants/respondents No. 1 and 2 herein submitted that by leading cogent evidence the applicants have proved that the deceased was drawing Rs.3,000/- per month as salary and hence no error is committed by the learned Commissioner by computing amount of compensation on the basis of the said amount. He also sought to argue that interest granted to the applicants ought to have been from the date of accident and not from the date of filing of the petition as is done by passing the impugned judgment.

9. Present appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 which provides for an appeal to this Court from the order of the Commissioner of awarding compensation, interest or penalty or order refusing to allow redemption of half-monthly payment etc. First proviso to Section 30 of the Act states that no appeal shall lie against any order unless a substantial

question of law is involved in the appeal and in the case of an order other than an order such as is referred to in clause (b) unless the amount in dispute in the appeal is not less than three hundred rupees.

10. The aforesaid provision makes it manifestly clear that in case of challenge to grant of compensation an appeal can be entertained only when there involves a substantial question of law. Thus for entertaining an appeal under Section 30 of the Act, appellate Court must satisfy itself about existence of a substantive question of law therein. At this stage it would be fruitful to refer to judgment of Hon'ble Apex Court, wherein, what is substantial question of law has been laid down. In the case of Sir Chunilal Mehta & Sons vs. Century Spinning and Manufacturing Co. Ltd., AIR 1962 Supreme Court 1314, it is observed thus :

"6.The proper test for determining whether a question of law raised in the case is substantial would in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or

calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

11. Further, in the case of Santosh Hazari vs. Purushottam Tiwari, **(2001) 3 Supreme Court Cases 179**, it is observed thus :-

“14. To be “substantial” a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law “involved in the case” there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount

overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis.”

12. In the instant case, the appellant is seeking to assail the impugned judgment on two grounds. There is challenge to the finding recorded by the learned Commissioner holding that both the sides have failed to lead evidence in respect of driving licence of the deceased. It is pertinent to note that there is no dispute raised by respondent No. 1 that deceased was employed as driver on tractor and was paid monthly salary. The insurer has taken up a plea of breach of terms of insurance policy for want of possessing a valid licence by the deceased. The proposition of law is no more res integra that the person who alleges breach must prove the same. The burden, therefore, was on this respondent to prove the said contention by leading evidence. The applicants, by entering into witness box, have discharged initial burden on them to prove the case. In the light of these facts the learned Commissioner has recorded a finding to the effect that insurer was not able to substantiate its case of breach of condition of Insurance Policy. The

said finding recorded by the learned Commissioner is pure question of fact and it is beyond jurisdiction of this Court in view of Section 30 of the Act to interfere in any finding recorded on fact. Having regard to the embargo to entertain any other question than substantial question of law, this Court is not inclined to entertain the challenge to the impugned judgment on this count.

13. There appears however, involvement of substantial question of law when it is contended by the appellant that the learned Commissioner has committed error in applying the amended provisions of the Act No. 46/2000 retrospectively. No occasion arose for the appellant to raise this issue before passing of the impugned judgment. It is settled law that a pure question of law can be raised at any stage of proceeding. The said question of law raised substantially and directly affects rights of parties to receive amount of compensation and liability to pay the same. In considered view of this Court, the issue raised deserves consideration. Thus, the following question is formulated for determination :

Whether the Commissioner for W.C.A. has erred in applying the amendment Act No. 46/2000 dated 8th December, 2000, retrospectively ?

14. It is not in dispute that the accident occurred on 3rd February, 2000 and the claim is filed on 24th March, 2000. Section 4 of the Act as it stood on the date of the accident as well as on the date of filing of the petition reads thus :

4. Amount of Compensation : (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :

(a) where death results from the injury : an amount equal to [fifty per cent] of the monthly wages of the deceased workman multiplied by the relevant factor: or an amount of [fifty thousand rupees] whichever is more :

* * *

Explanation II – Where the monthly wages of a workman exceed [two thousand rupees], his monthly wages for the purpose of Cls. (a) and (b) shall be deemed to be [two thousand rupees] only.

* * *

Pursuant to Amendment Act No. 46/2000, this provision is amended which reads thus :

4. Amount of Compensation : (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :

(a) where death results from the injury : an amount equal to [fifty per cent] of the monthly wages of the

deceased workman multiplied by the relevant factor: or an amount of [**eighty** thousand rupees] whichever is more :

* * *

Explanation II – Where the monthly wages of a workman exceed [**four** thousand rupees], his monthly wages for the purpose of Cls. (a) and (b) shall be deemed to be [two thousand rupees] only.

* * *

15. A bare perusal of the provision as it stood prior to Act No. 46/2000 clearly shows that where the monthly wages of the workman exceeds Rs. 2,000/-, his monthly wages for the purpose of Clause (a) for computing compensation for death resulting from injury shall be deemed to be Rs. 2,000/- only. In other words, irrespective of the amount of salary drawn by the workman over and above Rs. 2,000/-, for the purpose of computing the amount of compensation, the wages of the workman can be taken only to the extent of Rs. 2,000/-. No doubt, by virtue of subsequent amendment which came into effect from 8th December, 2000, the maximum amount of wages for the purpose of computation of compensation was increased from Rs. 2,000/- to Rs. 4,000/-. However, the question that arises for consideration is whether in the instant case

the said increased amount could have been considered for the purpose of computation of compensation.

16. The law on the point of interpretation of Statute is settled to say that amendment to the substantial provisions of act are always prospective in its application unless it is otherwise so specified. In this regard reference can be made to the judgment of Hon'ble Supreme Court in case of Hitendra Vishnu Thakur and others vs. State of Maharashtra and others, 1994 AIR SC 2623 wherein it is held thus :

“25. (i) A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment.”

17. A fruitful reference can be made to the judgment passed in Criminal Appeal No. 9046/2019 by the Hon'ble Supreme Court in case of K. Shivaraman vs. P. Sathishkumar, wherein the question fell for consideration was that whether relevant date for determination of compensation payable is the date of the accident and the benefit of Act 45 of 2009 amending Section 1(B) of Section 4 of Employee's

Compensation Act, 1923, could be applied retrospectively. The Apex Court considering entire law on the point has held thus :

“We hold that the relevant date for the determination of compensation payable is the date of accident and the benefit of Act 45 of 2009 does not apply to accidents that took place prior to coming into force of Act 45 of 2009. Consequently, High Court erred in extending benefit of Act 45 of 2009 which deleted Explanation II to Section 4 to the present case. The High Court was required to determine the compensation payable on the date of accident, on which date the deemed cap of Rs. 4,000/- as monthly wages was applicable.”

18. In this backdrop, perusal of the aforestated provision shows that the said provision is substantial in nature as it creates right in favour of the parties and limits liability too i.e. workman and employer respectively. Consequently, it has also effect on the contract of insurance to determine amount of premium etc. Amendment Act No. 46/2000 nowhere indicates that the Legislature intended to apply the said amendment retrospectively. Thus, there is no iota of doubt that the amendment in question could have been applied with prospective effect only. Pertinently, not only accident in question has occurred prior to amendment but claim petition was

also filed before coming into force of amendment to Section 4 of the Act by Act of 46/2000.

19. In the light of aforesaid position, the learned Commissioner while computing the amount of compensation payable to the applicants has clearly erred in considering monthly wages of the deceased at the rate of Rs. 3,000/-. No doubt, the applicants by adducing evidence have proved that the deceased was drawing Rs. 3,000/- per month however, the provision of law as then prevailing restricted the said amount of wages only to the extent of Rs. 2,000/- for the purpose of computing compensation. The learned Commissioner appears to have ignored the said position of law while passing the impugned judgment and order. Hence, the amount of compensation calculated on the basis of wages of Rs.3,000/- per month is not sustainable. The substantial question of law as framed above is therefore answered in affirmative. Consequently the impugned order deserves appropriate modification.

20. There is no dispute about the age and employment of the deceased. The learned Commissioner has applied relevant factor of 221.37 while determining amount of compensation. Learned counsel

for both the sides have not disputed correctness thereof. Hence, the amount of wages of the deceased is considered to the extent of Rs.2,000/- per month. Thus, by multiplying 50% of the monthly wages of deceased i.e. Rs.1,000/- by relevant factor i.e. 221.37, the total amount of compensation payable to the applicants comes to Rs.2,21,370/-.

21. With regard to issue of interest, it is seen that learned Commissioner has allowed interest from date of filing of claim. Provisions of the Act entitles the workman/dependent to receive compensation on the date of accident and non-payment of such compensation attracts 12% interest per annum. Thus, learned Commissioner has erred in granting interest from date of application and not from date of accident. The impugned judgment therefore deserves modification.

22. In view of above discussion, present appeal deserves to be partly allowed. Hence the following order :-

ORDER

(i) Appeal is partly allowed.

(ii) Judgment and award dated 10th July, 2002, passed in W.A.C. No. 9/2000 by the learned Commissioner, for Workmen's Compensation Act and Civil Judge Senior Division, Osmanabad stands modified in following terms :-

“Original respondents 1 and 2 shall jointly and severally pay the compensation amount to the tune of Rs. 2,21,370/- to the claimants along with interest at the rate of 12% per annum from the date of accident till realisation of the entire amount.”

(iii) Award be drawn accordingly.

(iv) Original claimants shall be entitled to receive the amount deposited by the appellant along with interest accrued thereon, after due verification of their identity by the Registrar.

(v) Pending civil application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge