



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

924 FIRST APPEAL NO. 2632 of 2013

Bharat Kishan Hanwate

....Appellant

VERSUS

Vilas Seshrao Naik & another

.....Respondents

.....

Mr. P. S. Agrawal, Advocate for Appellant

Mr. S. V. Kulkarni, Advocate for Respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 26th JULY, 2024.

PER COURT :

1. Heard.
2. This Appeal is filed for enhancement of compensation under the Workmen's Compensation Act.
3. Parties are referred as workman, employer and insurer for the sake of brevity.
4. The facts which led to filing of the Appeal can be narrated in brief as under :-

Workman claims to be employed by the employer i.e. owner of Tractor bearing registration No. MH 38 B 119 and threshing machine attached to the said tractor. He claims that he was paid salary of Rs. 6,000/- per month by the employer. On 16.10.2010, accident occurred while the workman was performing his duty on the tractor. He claims that the accident has occurred during the course of employment. He sustained crush injury to the right hand. He was taken to Dr. Tehare at Hingoli wherein treatment was extended to him. He was then shifted to Aadhar hospital, Nanded and was indoor patient from 16.10.2010 to 17.11.2010. He claims to be aged about 18 years at the relevant time. He further claims that he incurred medical expenses of about Rs. 1,50,000/-. Total compensation was sought to be Rs. 9,68,000/-.

5. Employer filed written statement at Exhibit 9 and admitted that the workman was working as labour on the tractor attached with threshing machine. He also admitted that the worker was paid salary of Rs. 6,000/- per month. It is claimed that the workman is insured with the insurer.

6. Insurer filed written statement denying the contention of the workman including employee-employer relationship between him and his employer. Defence is also taken with regard to the driver of the tractor not holding valid and effective licence and hence liability to pay compensation is denied. There is specific denial in the written statement about payment of Rs. 200/- per day being paid by the employee to the workman.

7. Workman entered into witness box and also led evidence of Kadam at Exhibit 37 and Bhagwan Mugal at Exhibit 38. Employer also examined himself and deposed about employment of workman with him and salary of Rs. 6,000/- per month being paid to him. Though insurer led evidence, there is no evidence on record to indicate that the driver of the tractor was not holding valid and effective license at the relevant time. As such, there is no reason for this Court to hold that insurer is not liable to pay compensation for breach of terms of insurance policy.

8. Learned Commissioner of Workmen's Compensation, by passing impugned award has directed payment of compensation of

Rs.3,76,320/- with interest at the rate of 6% per annum till realisation of the amount to the workman.

9. Learned counsel for workman submits that at the relevant time i.e. in October 2010, the wage limit which could have been considered for the purpose of computation of compensation was Rs. 8,000/- per month. He placed reliance on notification dated 31.05.2010, to support said contention. According to him, there is no dispute made by the employer about he paying Rs. 6,000/- per month as wages to the workman. It is also his submission that the workman examined himself and deposed about same, so also there is oral evidence of employer to corroborate the same. It is his submission that in absence of any positive evidence being led by the insurer, it was not open for the learned Commissioner to deny the claim of workman of earning Rs. 6,000/- per month. It is his submission that there is no justification for accepting salary of the workman at Rs. 4,000/- per month. Thus, it is his submission that the amount of compensation ought to have been calculated on the basis of wages of Rs. 6,000/- per month. He also sought enhancement of compensation by contending that the Commissioner has failed to take into account the medical expenses incurred by the

workman and the same ought to have been directed to be paid. Lastly, it is his submission that interest payable on the amount of compensation statutorily would be 12% per annum and hence the impugned award deserves modification.

10. Learned counsel for insurer opposed the said submission by contending that the workman has specifically admitted in his cross-examination that he used to be paid salary on the wage register. It is his submission that in absence of any such evidence placed on record, only on the basis of oral evidence of the workman and employer, it cannot be held that he was earning Rs. 6,000/- per month. It is his contention that since there is insurance policy covering risk of the workman, and apparently there is collusion between workman and employer to get more compensation than entitled. Attention of this Court is also drawn to the observation made by the Commissioner with regard to the amount of Rs. 2,00,000/- being paid by the employer to the workman towards medical treatment. Thus, it is his submission that there is no case made out by the workman for enhancement of compensation.

11. There cannot be any doubt with regard to the fact that adequate compensation would be required to be paid to the workman for permanent disability caused to him owing to occurrence of accident arising out of and during course of his employment. He would be entitled to claim adequate compensation and the same shall not be bonanza. Merely because risk of the workman is covered under insurance policy, exorbitant compensation cannot be directed to be paid. Perusal of the record indicates that the employer has not contested the claim but supported the claim of the workman. Had it been the case that there was absolutely no evidence led by the workman to substantiate that he was earning Rs. 6,000/- per month, the contention of learned counsel could have been accepted by any Court. Cross-examination of the workman however, indicates that he was paid wages on wage register maintained by the employer. Such document is never brought on record by the workman or the employer. In the cross-examination of the employer, there is specific suggestion made to him that the workman was not paid Rs. 6,000/- per month. Mere denial of said suggestion by the employer is not sufficient to hold that the workman was paid wages of Rs. 6,000/- per month. In such circumstances, it is rightly held by

Commissioner that the workman has failed to prove the initial burden on him of earning Rs. 6,000/- per month as wages.

12. In the light of aforestated facts, the Commissioner, after considering the nature of work performed by the workman, has held that he was earning Rs. 4,000/- per month. Notification issued under the Minimum Wages Act indicates that this was the minimum wage at the relevant time paid to a labourer. Having regard to the same, this Court finds no perversity in the said observation/findings recorded by the Commissioner.

13. As far as claim of workman about incurring medical expenses is concerned, there is evidence of the employer to the effect that he has paid Rs. 2,00,000/- to the workman towards medical treatment. There is no dispute made with regard to the said fact by the workman. Once the workman has received said amount from the employer, question of granting any compensation for the same does not arise. He would not be entitled to receive said amount twice.

14. There is no dispute about the fact that calculation done by the Commissioner for determining amount of compensation is in

accordance with Section 4 of Workmen's Compensation Act. Having regard to the age of the workman and wages earned by him, calculation of compensation has been rightly done. This Court, therefore finds no reason to enhance compensation as determined by the Commissioner.

15. In view of Section 4A of the Workmen's Compensation Act, the amount of interest payable on the compensation would be 12% per annum. The learned Commissioner has granted interest at the rate of 6% per annum. Hence, modification is required in the impugned award to that extent.

16. Award accordingly stands modified to the extent that the workman would be entitled to receive amount of compensation along with interest at the rate of 12% per annum instead of 6% per annum. Rest of the order/award is maintained.

17. Appeal is disposed of in above terms.

(R. M. JOSHI)
Judge