



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 418 OF 2022

Shriram General Insurance Co. Ltd.,
Through its Divisional Manager,
Head Office E-8, EPIP,
Sitapura Industrial Area, Jaipur,
Tal. and District : Jaipur,
Pin – 302022
State : Rajasthan.

.... **APPELLANT**

// VERSUS //

- 1) Sheikh Fattemohammad Sheikh Karim,
Aged about 65 years, Occu. : Nil,
- 2) Khairunbi Sheikh Fattemohammad,
Aged about 62 years, Occu. : Nil,

Both R/o. Waaghi Khurd,
Post Keshav Nagar,
Tq. Risod, District – Washim.
- 3) Sk. Amir Sk. Umar,
Age : Adult, Occu. : Owner of Truck,
R/o. 1st Floor, Above Buldhana
Urban Bank, Branch at Sultanpur,
Sultanpur, Tal. Lonar, Dist. Buldhana.
- 4) Smt. Gazala Parveen Wd/o Sheikh Adil,
Aged about 23 years, Occu. : Household,
- 5) Sheikh Rizwan S/o Sheikh Adil,
Aged about 01 year, Occu. : Nil,
- 6) Sheikh Aahil Sheikh Adil,
Aged about 04 Months, Occu. : Nil,

(Respondent Nos.5 and 6 being
minor through his natural guardian
i.e. Respondent No.4)

All R/o. Near Masjid,
Ambadas Nagar, Risod,
Tq. Risod, Dist. Washim.

.... **RESPONDENTS**

Mr. Girish I. Dipwani, Advocate for Appellant.
Mr. P. R. Agrawal, Advocate for Respondent Nos.1 and 2.
Mr. J. B. Gandhi, Advocate for Respondent No.5.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 04.07.2024.

DATE OF PRONOUNCING THE JUDGMENT : 04.10.2024.

JUDGMENT.

1. This appeal is preferred against the judgment and order passed by learned Commissioner Under Workmen's Compensation Act, 1923 (for short the "W.C. Act") Akola, District Akola, in W.C.A. No.06 of 2016, dated 26.02.2018.

2. Brief facts of the case are as under :

(i) Sheikh Adil Sheikh Fattemohammad was in an employment of respondent No.1 namely Sk. Amir Sk. Umar as driver. He used to drive truck bearing No. MH 19 Z 2089 owned by Sk. Amir. He was having valid driving license. On 19.11.2005, he was driving the said truck. When he was proceeding from the Nagpur to

Aurangabad Highway, one truck bearing No. MH-29 9346 gave dash to the truck driven by Sheikh Adil. Sheikh Adil sustained serious injuries and died. The report was lodged accordingly. At the time of accident, he was about 27 years old. He was getting salary of Rs.9,000/- per month and Bhatta of Rs.100/- per day.

(ii) The applicants are the parents, wife and children of Shaikh Adil. They claimed that they were dependents on the salary of Shaikh Adil. They prayed for compensation under the WC Act. The learned Commissioner allowed the claim by holding salary of late Sheikh Adil of Rs.8000/- per month along with Bhatta of Rs.100/- per day i.e. Rs.3,000/- per month, total Rs.11,000/- per month. It is challenged in this appeal.

3. The following substantial question of law is formed :

“Whether the Commissioner under the Workmen’s Compensation Act is justified in considering the income of the deceased at the rate of Rs.11,000/- per month?”

4. Learned Advocate for the appellant submitted that the Notification issued by Ministry of Labour and Employment Department, published on 31st May, 2010 is wrongly relied upon by

the Commissioner published under Section 4(1)(b) of the WC Act which is applicable to the employee who sustained permanent disabilities and not to the dead employee under the WC Act. The learned Commissioner erred while deciding issue of quantum of compensation and concluded Rs.8,000/- per month as salary of late Sheikh Adil and Bhatta of Rs.100/- per day i.e. Rs.3,000/- per month holding Rs.11,000/- per month income of late Shaikh Adil. He lastly prayed to allow the appeal by setting aside the impugned judgment as it is illegal.

5. The learned Advocate for the respondents/claimants strongly opposed the appeal and submitted that daily Bhatta is part and parcel of daily-wages as per the Minimum Wages Act, 1948. Therefore, the claimant's right to claim compensation is properly and legally considered by the Commissioner. He is relying upon the following precedential law :

(i) ***Jaya Biswal & Ors. Vs. Branch Manager, IFFCO Tokio General Insurance Company Ltd., & Anr.***, reported in ***2017(1) SCC (Cri) 275***, in which Para 23 reads as under :

“23. Since neither of the parties produced any document on record to prove the exact amount of wages being earned by the deceased at the time of the accident, to arrive at the amount of wages, the

learned Commissioner took into consideration the fact that the deceased was a highly skilled workman and would often be required to undertake long journeys outside the state in the line of duty, especially considering the fact that the vehicle in question had a registered National Route Permit. The wages of the deceased were accepted as Rs.4,000/- per month + daily bhatta of Rs.6,000/- per month, which amounts to a total of Rs.10,000/-."

(ii) ***New India Assurance Company Ltd. Vs. Mehrajbi Shafi Saiyyad & Ors.***, reported in ***2021(171) FLR 129***, in which it is held that deceased driver was getting Bhatta along with salary which was to be treated as part of wages, hence claimants are entitled to get enhanced compensation. In which, para 21 reads as under :

"21. In the circumstances, I am of the opinion that the finding recorded by the learned Commissioner and Judge, Labour Court that there is no document available on record to show that the deceased used to receive 'Bhatta', is contrary to record as the certificate Exhibit C-10 is on record. Moreover, from the above referred Judgments it is clear that the claimants are entitled for compensation after considering the amount of salary and 'Bhatta' as income of the deceased."

6. The learned Advocate for the respondents/claimants further submitted that as per the definition of wages defined in Section 2(h) of the Minimum Wages Act, 1948, "wages" means all remuneration, capable of being expressed in terms of money, which

would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, which includes house rent allowance etc. He submitted that impugned judgment is legal and correct. It is lastly prayed to dismiss the appeal.

7. The learned Commissioner erred and wrongly applied the Notification dated 31.05.2010 to this case. It is applicable in the case of permanent disablement as per Section 4(1)(b) of the WC Act. But only because of mistake of Court, party shall not suffer which is a settled principle i.e. “Actus Curiae neminem gravabit”, reported in ***D.Purushotama Reddy & Anr Vs. K. Sateesh, 2008 SCC 505.***

8. Perused the impugned judgment and evidences of witnesses of the claimants. The learned Commissioner while appreciating the evidence of claimants held that there is no any documentary evidence to show that the deceased Sheikh Adil was getting salary of Rs.9,000/- per month and Bhatta of Rs.100/- per day. It relied upon the Gazette of Central Government dated 31.05.2010. in which minimum wages of Rs.8,000/- per month was fixed. It calculated an amount of Rs.8000/- per month as salary and

Rs.100/- daily Bhatta i.e. Rs.3000/- per month. The total monthly salary of Rs.11,000/- per month was calculated.

9. The evidence of claimant No.1 Sheikh Fattemohammad Sheikh Karim C.W.-1 that deceased Sheikh Adil was getting salary of Rs.9,000/- per month and Bhatta of Rs.100/- per day is not shaken in the cross-examination. No any documentary evidence is necessary when late Shaikh Adil was serving privately. The said evidence is denied by the respondent. However, said evidence is natural, probable, acceptable and sufficient. In view of *ratio* laid down in the authorities ***Jaya Biswal*** and ***New India Assurance Company Ltd*** cited *supra*, the reasons and findings of the trial Court are legal and correct. The wages defined in the Section 2 (h) (iv) includes any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment. Thus, evidence of the special expenses in the form of 'Bhatta' of Rs.100/- regularly paid to the deceased Sheikh Adil, comes within the purview of wages as discussed above. The claimants are, therefore, certainly entitled for it, who are dependents. No any exorbitant amount of salary and Bhatta was claimed by the claimants. It is reasonable amount. The evidence of claimant No.1 is, thus, reliable. The reasons and the findings of the learned Commissioner are legal, correct and hence, claimants are

rightly held entitled for compensation of Rs.11,000/- per month. Therefore, argument of learned Advocate for the appellant is not acceptable that the Notification dated 31st May, 2010 is of no use to calculate the amount of salary of deceased Sheikh Adil.

10. The learned Commissioner is justified in considering the salary of deceased Sheikh Adil at the rate of Rs.11,000/- per month. The impugned judgment is legal, correct and no interference is warranted in it. Therefore, the argument of the learned Advocate for the appellant is not acceptable. The substantial question of law is therefore answered in the negative. The appeal being devoid of merit, deserves to be dismissed. It is **dismissed** accordingly.

11. The respondents were compelled to face the appeal. They must have incurred some amount, therefore, it would be proper to direct the appellant to pay **Rs.5,000/-** (Rs. Five thousand only) as costs of this appeal to the respondents. The appeal is **disposed of**.

12. In view of disposal of first appeal, pending application(s), if any, shall stand disposed.

(SANJAY A. DESHMUKH, J.)