



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.193 OF 2006

1. Nita w/o. Rambhau Shinde
Age:32 years. Occu: Household
2. Priya d/o Rambhau Shinde
Age: 16 years. Occu: Education
3. Manoj s/o. Rambhau Shinde
Age: 15 years. Occu: Education.
4. Pallavi d/o. Rambhau Shinde
Age: 10 years. Occu: Education
5. Mukinda s/o. Tukaram Shinde
Age: 62 years. Occu: Nil.
6. Hausabai w/o. Mukinda Shinde
Age: 57 years. Occu: Nil.

Applicants No.2 to 4 are minors.
U/G of their mother applicant No.1.
All R/o. Lohta (E). Taluka Kallamb
Dist. Osmanabad.

...Appellants
(orig. Applicants)

VERSUS

1. Bhaskar s/o. Ganpati Shankar
Age: major Occu: Business
R/o. Lohata (E). Tq. Kallamb, Dist. Osmanabad.

2. National Insurance Company Limited,
Through its Branch Manager,
Hanuman Chowk, Main Road, Latur.

...Respondents
(Orig. Respondents)

Mr. S. S. Manale, Advocate for the Appellant.

Mr. D. V. Soman, Advocate for Respondent no.2.

CORAM : KISHORE C. SANT, J.

DATE : 14th NOVEMBER 2025

ORDER :-

1. This Appeal arises out of Judgment and Award passed by the learned Commissioner for Workmen's Compensation Act (Employees' Compensation Act), and Judge, Labour Court, Latur, dated 29th November 2005, to the extent of not allowing the claim of the appellants in its entirety. The appellants are original claimants. The respondent No.1 is the employer and the Insurance Company is Respondent No.2 in the claim application.

2. The claimants are the heirs of one deceased Rambhau Shinde. The appellant No.1 is the widow and appellant Nos.2, 3 and 4 are the children. Respondent Nos. 5 and 6 are the parents of the deceased.

3. It is the case that, the respondent No.1 happened to be owner of truck bearing Registration No. MH-24-F-4377. The deceased was working as a driver on the said truck. He was driving the said vehicle on 02.06.2004. The truck, which was proceeding from Latur to Ambejogai road, met with an accident. One vehicle coming from the opposite direction gave a heavy dash to the truck. The deceased died on the spot in the said accident. The claimants, therefore, approached the learned Commissioner. It is stated that the deceased was getting a salary of Rs.4,000/- per month. A notice was issued to the Respondents. In spite of receipt of notice, respondents failed to pay the compensation. Considering the provisions, it was prayed that the claimants are entitled to receive the compensation of Rs.4,03,322/- as the deceased was aged 33 years.

4. The learned Commissioner, on the basis of evidence and after hearing the parties, was pleased to partly allow the application and passed the award considering the salary to be Rs.2,800/- per month. The claimants have, therefore, approached this Court stating that when there was clear evidence showing the salary to be Rs.4,000/- per month, the

learned Commissioner has wrongly taken the salary to be only Rs.2,800/- per month.

5. Learned Advocate Mr. Manale vehemently submits that in the claim petition, the salary is stated to be Rs. 4,000/- per month. The evidence was clearly led to that effect. Still, the learned Commissioner considered the salary to be Rs.2,800/- per month without any cogent material to that effect. The Commissioner thus committed an error in not granting adequate compensation. He further submits that the Court has awarded interest @ 7.5% which ought to have been 12% per annum in view of the provisions of the Act.

6. Learned Advocate Mr. Soman vehemently opposes the appeal. He submits that, there is no substantial question of law involved in the appeal. The question is only of a quantum. There is no positive evidence to show the income/salary of the deceased. Merely on oath, the witness has deposed that the salary to be Rs.4,000/-. This evidence is not sufficient to come to any conclusion. He submits that though there was no evidence, the learned Commissioner has graciously accepted the salary to be Rs.2,800/- per month. He thus prays for dismissal of the appeal.

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7. In view of the above position, this Court finds that the substantial question of law that would arise is as to whether in absence of any contra evidence, the Commissioner has committed a mistake in not accepting the evidence of the claimants as regards the salary. The second question is as to whether the learned Commissioner has rightly awarded interest on the amount @ of Rs. 7.5% instead of 12%.

8. It is seen in this case that in the claim petition it is specifically stated that the deceased was getting a salary of Rs.4,000/- per month. The claimants have also stated in evidence that the salary was Rs.4,000/- per month. There was nothing on record to show the exact salary. At the same time, there is no contra evidence showing the income to be Rs.2,800/- per month. This Court has seen the evidence of the claimants. The claimant's witness is not cross-examined by the respondent No.1. In the cross-examination by respondent No.2, it was only suggested that the amount claimed is excessive and the wages stated are excessive. It was suggested that there was no proof of wages received by the deceased. Except for that, there is no question asked or suggestion given to bring on record that the income of the deceased was

not Rs.4,000/-.

9. Learned Advocate Mr. Manale relied upon the judgment of the Hon'ble Apex Court in case of *Shantilata Sethy and Anr. Vs. The Divisional Manager and Ors.*¹. In the said case, the appellant had filed an application for compensation of Rs.3 lakhs. It was stated that the deceased was receiving a salary of Rs.2,400/-, when the accident took place. The said amount was admitted by the employer. It was observed that special expenses paid to the employee by the nature of his employment are covered under the meaning of "wages" under Section 2(m) of the Minimum Wages Act, 1948. In that case, the deceased was receiving Rs.25/- per day towards food expenses. The computation was made by 50%. The age of the deceased was 24 years. The relevant factor was thus considered to be 218.47 multiplied by 50% of wages. It was directed to pay compensation of Rs.2,64,895/- with interest @ 12% per annum.

10. In the present case, this Court finds that, when there was evidence of claimant's witness that the salary was Rs.4,000/-, there was no occasion for the learned Commissioner to consider the salary of

¹ 2021 DGLS(SC) 1015
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Rs.2,800/- per month. This Court finds that the learned Commissioner has thus committed a mistake in considering the income only Rs.2,800/- per month. So far as the interest is concerned, when law makes a provision that the amount of interest be at the rate of 12%, there was no question of granting the interest at reduced rate. On both these counts, this Court finds that the learned Commissioner has committed an error while passing the impugned order. Considering the age of 34 years, the multiplier would be 197.06. This Court finds that petition therefore deserves to be allowed. Hence, the following order:-

O R D E R

- (i) First appeal stands allowed.
- (ii) The respondents to pay jointly and severally compensation to the appellants as below.
 - (a) Monthly wages - Rs.4,000/-
 - (b) 50% of the Monthly wages – 2,000/-
 - (c) Relevant factor – 197.06
 - (d) Total compensation $2000 \times 197.06 = 3,94,120/-$.
- (iii) The compensation amount shall carry interest at the rate of 12% per annum from the date of accident i.e. 02.06.2004 till realization.

- (iv) The amount be paid by deducting the amount which is already paid. The difference of interest be paid by considering the interest on which the amount is paid.
- (v) The respondent No.1 is directed to pay penalty amount of Rs.1,97,060/-.
- (vi) Award be modified accordingly.
- (vii) The respondent to deposit the amount in this Court within twelve (12) weeks from today.
- (viii) After the amount is deposited in this Court, the appellants shall be entitled to receive the said amount without requiring formal application.
- (ix) With this, first appeal stands disposed off.
- (x) Pending civil applications, if any, also stand disposed off.

[KISHORE C. SANT, J.]