



This order is corrected vide speaking to the minutes order dated 13.2.2025.

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

11 FIRST APPEAL NO.1696 OF 2024

The Assistance Engineer Maharashtra State Electricity
Distribution Company And Another
Versus
Sheetal Vishal Mohite and another

...

Mr. A M Gaikwad, advocate for appellants.

Mr. K.B. Jadhav advocate for respondents.

Mr. Avinash M. Reddy, Advocate for respondent no.2.

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**WITH
CIVIL APPLICATION NO. 2953 OF 2024 IN FA/1696/2024**

Sheetal Vishal Mohite

VERSUS

The Assistance Engineer Maharashtra State Electricity
Distribution Compnay And Another

...

Advocate for Applicant : Mr. K.B. Jadhav

Advocate for Respondents : Mr. A.M. Gaikwad

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 07, 2025

ORDER :-

1. The appellant takes exception of the judgment and award dated 21.8.2023 passed by the Commissioner for Employees Compensation, Labour Court, Jalna in WCA No (C) 3 of 2021.

2. Heard learned advocates appearing for the respective parties.

3. Respondent no.1 instituted the proceeding under Employees Compensation Act contending that deceased Vishal died in the accident dated 23.6.2020 during the course of and arising out of his employment with respondent company. Although, respondent nos.1 and 2 caused appearance and filed their written statement, they did not participated. Consequently, consequently Commissioner passed an award dated 21.8.2023 directing respondent nos.1 and 2 to pay compensation of Rs.30,87,898/- alongwith interest @ 12% p.a. to the claimants. Claim as against respondent no.3 Insurance Company came to be dismissed.

4. Mr. Gaikwad, learned counsel appearing for the appellant submits that, there is serious dispute as to whether death of deceased is arising out of the employment since he died in motor vehicular accident after duty hours. He would further submit that Commissioner made assessment of the compensation on the basis of entire salary of deceased as claimed and not as per notification of the Government as regards to maximum amount to be considered for the purpose of assessment of compensation as prescribed under Rule 4 (IB) of the Act. He would further invite attention of this Court to medical certificate of learned advocate, who was engaged on behalf of the appellant before the Commissioner, to contend that advocate was seriously ill and could not attend the proceeding during relevant period. He would therefore urge that interest of justice would subserve if the appellant is granted one more opportunity to cross-examine the claimants witnesses and lead own evidence.

5. The learned counsel appearing for respondents/claimants vehemently opposed the contentions. He submits that, insptie of sufficient opportunities, respondents failed to lead evidence or cross-examine claimant's witnesses. He submits that, previously, evidence of respondent was closed. Said order was assailed before this Court. This Court granted respondents an opportunity to lead their evidence subject to payment of costs. Inspite of such order, respondents failed to take opportunity. As such, they do not deserve any more opportunity.

6. Having considered the submissions advanced, following substantial questions of law emerges in this appeal.

- i) Whether the Learned Commissioner has committed error on the face of record by rejecting the application below Exh-27 thereby left appellants with no evidence in the proceeding that has resulted in miscarriage of justice.

7. Learned advocates appearing for the respective parties submitted that, instead of admitting appeal on aforesaid question of law, the same may be considered for final disposal as appellants are restricting their prayers to remand of matter with an opportunity to lead the evidence.

8. Learned counsel have therefore restricted their submissions on substantial question of law, as framed.

9. Having considered the submissions on aforesaid substantial question of law, it can be observed that respondents have raised defence that death of deceased is not within the

duty hours and even there is no casual connection between accidental death of deceased and employment. The aforesaid contentions requires evidence from the respondent. It is true that inspite of sufficient opportunity, the respondents could not lead evidence. However, fact remains that learned advocate appearing for respondent was seriously ill as can be seen from the medical certificate and possibly he was not in a position to attend the proceeding at the relevant time. Absence of the respondent cannot be termed as deliberate. In that view of the matter, substantial question of law requires to be answered in the affirmative. However, remand of the matter shall be encompassed with certain conditions so as to secure interest of the both the parties. Hence, following order is passed.

Order

- i. First Appeal is partly allowed.
- ii. The judgment and award dated 21.8.2023 passed by the Commissioner for Employees Compensation, Labour Court, Jalna in WCA No (C) 3 of 2021 is hereby quashed and set aside.
- iii. Matter is remitted back to the Commissioner For Employees Compensation, Jalna.
- iv. The Application be restored/reinstated on its original number/stage.
- v. Parties shall appear before the Commissioner on 4.3.2025.

- vi. Respondent nos.1 and 2 shall be at liberty to cross examine claimant's witnesses and also lead their own evidence within a period of four months from the date of this order.
- vii. The learned Commissioner shall endeavor to dispose of the proceeding within a period of six months from today.
- viii. The claimants shall be entitled to receive costs of Rs.25,000/- from the respondent nos.1 and 2.
- ix. The claimants shall also be entitled to provisionally withdraw an amount of RS.10.00 Lakh (Rs. Ten Lakh) deposited with the Commissioner for Employees Compensation, Jalna on furnishing undertaking that, in case of adverse order, they shall redeposit the amount within a period as stipulated by the learned Commissioner. The withdrawal of the amount is subject to final outcome of the proceeding before the Commissioner.
- x. First Appeal stands **disposed of**.
- xi. Costs of Rs.25,000/- to be deposited with the Commissioner on the date of appearance i.e.

on 4.3.2025, which shall be the condition precedent for reopening of the evidence.

- xii. Pending civil application also stands disposed of.

(S. G. CHAPALGAONKAR)
Judge

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