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1486.04FA

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

FIRST APPEAL NO.1486 OF 2004

1. Sunita
2. Tukaram
3. Vishwanath Narsing Apasanwad,
4. Jijabai

**.. APPELLANTS
ORIG. APPLICANTS**

VERSUS

1. Sandipan Dyanoba Tathapare,
2. New India Assurance Co. Ltd.
Through Br.Manager, Latur.

.. RESPONDENTS

...
Mr.R.B.Deshmukh, Advocate for the appellants.
Mr.S.S.Dargad, Advocate holding for
Mr.S.G.Chapalgaonkar, Advocate for respondent no.2.
...

**CORAM : S.G.DIGE, J.
DATE : 25.08.2022**

ORAL JUDGMENT :

1] Being aggrieved and dissatisfied by the judgment and award passed by the Commissioner for Workmen's Compensation and Judge, Labour Court, Latur in WCA No.33/2003, the appellants – original claimants preferred this Appeal for enhancement of amount of compensation.

Brief facts of the case are as under:

2] On 31st January, 2003, when the deceased Parmeshwar was driving the vehicle at about 6.00 a.m., at the relevant time the truck coming from the opposite direction gave dash to the truck driven by the deceased Parmeshwar. Due to said accident, he died on the spot.

3] As the accident was occurred during the course of employment, hence, the claimants filed petition for claiming the compensation before the Commissioner for Workmen's Compensation and Judge, Labour Court, Latur

[for short 'the trial Court']. Considering the evidence on record and after hearing the parties, learned trial Court has awarded the compensation. Against the said judgment and order, this appeal.

4] It is the contention of the learned counsel for the appellants that the trial Court has not properly considered the income of the deceased. The deceased was driver. The trial Court has considered the income of the deceased of Rs.2,000/- per month. In the evidence, it has come on record that the deceased was getting salary of Rs.4,000/- per month but this fact was not considered by the trial Court. The trial Court has awarded 9% interest on the compensation amount from the date of accident. It should be 12% interest, hence, requested to allow the appeal.

5] It is the contention of the learned counsel for respondent no.2 that the trial Court has passed the judgment and order on the basis of evidence led before the trial Court, the trial Court has considered all the aspects. No

evidence was produced before the trial Court to prove that the deceased was getting Rs.4,000/- per month as salary. The interest awarded by the trial Court is proper, hence, the judgment passed by the trial Court is legal and valid.

6] I have heard both learned counsel. Perused the judgment and order passed by the trial Court. The issue involved in this appeal is in respect of the income of the deceased was not properly considered by the trial Court and rate of interest should be 12%.

i] Income of the deceased

Appellant no.1, who is a widow of the deceased, has examined herself before the Court and deposed that the deceased was getting Rs.4,000/- per month towards wages along with separate Bhatta. In cross examination, she admits that there is no salary certificate in respect of salary of her husband. The trial Court has observed that appellant no.1 had not filed any document to show that salary of the deceased was Rs.4,000/- per month. Her evidence is

hearsay, hence, the trial Court has considered the salary of deceased Rs.2,000/- per month. In my view, admittedly, the deceased was driver of the truck vehicle so no question of salary certificate arise as he was private employee of truck owner. Generally, the wife knows salary of the husband. It has come in the evidence of appellant no.1 that her husband was getting Rs.4,000/- per month including Bhatta; it does not mean that she was speaking false. The trial Court should have considered this fact. The trial Court has considered lesser amount of Rs.2,000/- per month as salary of the deceased. Appellant no.1 has stated that Rs.4000/- salary was including Bhatta. Hence, I am considering salary of the deceased as Rs.3,000/- per month.

ii] The issue in respect of interest awarded by the trial Court, in my view, Section 4-A of the Employees' Compensation Act, 1923 is compensation to be paid when due and penalty for default. Sub-section (3) (a) of the Employees' Compensation Act reads as under :

(3) Where any employer is in default in paying the compensation due under this Act

within one month from the date it fell due, the Commissioner shall, -

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

7] This section specifically states that rate of interest shall be Rs.12% but the trial Court has erred while awarding the interest of Rs.9%, hence, I am considering the rate of interest of 12%.

8] Considering the above, the appellants are entitled for following amount as compensation:-

Monthly wages : Rs.3000/-

50% of it : Rs.1500/-

for expenses

Multiplying factor : 211.79

There is no dispute of multiplying factor, hence, $211.79 \times 1500 = \text{Rs.}3,17,685 + 12\%$ interest. The appellants are entitled for this amount. The Tribunal has granted $\text{Rs.}2,11,790/- + 9\%$ interest.

9] In view of the above, I pass the following order:-

ORDER

i] Appeal is allowed. The appellants are entitled for enhanced amount of Rs.1,05,895/- @ Rs.12% interest. The appellants are entitled to get 12% interest on the amount of Rs.2,11,790/- from the date of filing of the application till its realization.

ii] Accordingly, Appeal is disposed of.

iii] The appellants are permitted to withdraw the amount.

[S.G.DIGE]
JUDGE

DDC