
(2013) 07 BOM CK 0117
In the Bombay High Court
Case No : First Appeal No. 79 of 2013

The Oriental Insurance Co. Ltd.	Vs	APPELLANT
Smt. Sunita and Others		RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A, 337
Workmens Compensation Act, 1923 — Section 4, 4A(3)

Citation : (2013) 5 ABR 831 : (2013) 6 ALLMR 136 : (2014) 4 BomCR 635 :
(2013) 139 FLR 640 : (2013) 6 MhLj 224

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : D.N. Kukday, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Heard Mr. D.N. Kukday, learned Counsel for the appellant. None appears on behalf of the respondents, though served. Admit.

2. This appeal is directed against the judgment and order dt. 18.10.2012 passed by the Commissioner for Workmen's Compensation Labour Court, Buldhana in W.C.A. (F.) No. 3 of 2007 whereby the Labour Court, Buldana awarded the sum of Rs. 3,84,267/- to the applicants therein along with interest @ 12 % per annum from the date of application till full realisation of the amount and costs in the sum of Rs. 5,000/- payable to the applicants.

3. The facts, briefly stated, are as under:

Deceased Gajanan was husband of claimant/applicant no. 1 and father of claimant/applicant nos. 2 and 3 and son of applicant nos. 4 and 5. He was in the employment of one Sandip Pandurang Kale having business at village Mera, Tq. Chikali, District Buldhana as a driver. Said Sandip Kale was owner of tractor bearing registration No. MH-28 D-2393, while trolley of the tractor was not registered. The tractor was insured with Oriental Insurance Company Ltd.

through Branch Manager, Akola, Tq. and District Akola with valid period of insurance policy between 20.3.2005 to 19.3.2006. On 11.11.2005, when deceased Gajanan was driving the tractor pursuant to directions from Mr. Kale (owner of the tractor) from Mera to Bharosa road, at about 2.30 p.m. to 3.00 p.m. accident occurred. Police Station Officer, Police Station, Andhera registered an offence at Crime No. 89/05, under Sections 304-A and 337 of the Indian Penal Code. Gajanan lost his life at the age of 32 years.

4. The deceased used to get Rs. 100/- per day as wages and Rs. 30/- as other allowances. Thus, he was earning a sum of Rs. 3,900/- p.m. from Mr. Sandip Kale, owner of the tractor. Since owner of the tractor refused to pay compensation claimed by the applicants in the trial Court, they had claimed a sum of Rs. 4,00,000/- as compensation with interest. The owner contended that the accident had occurred due to fault of deceased Gajanan and, therefore, the claimants cannot claim any amount. While, the Insurance Company contended that the applicants must prove by documentary evidence that the deceased was permanent driver of the vehicle as also about his monthly salary. It is also contended that since the offence was registered against deceased Gajanan, the claimants are not entitled for compensation. In the alternative, it is contended by the Insurance Company that the claim is excessive and exorbitant and the claimants are not entitled for the same. Thus, the parties were at dispute whether deceased Gajanan was employed by Mr. Sandip Pandurang Kale as driver and whether he died in an accident occurred during the course of and arising out of employment of owner of the tractor. The Commissioner answered these questions in the affirmative as also held that monthly salary of Gajanan Kale @ Rs. 3,900/- p.m. was proved and proceeded to award compensation in the sum of Rs. 3,84,267/- with interest @ 12 % p.a. from the date of filing of application till realisation.

5. Oral evidence of Smt. Sunita Kale was on record. No evidence was led on behalf of the respondents. Under these circumstances, the award of compensation has been challenged on the ground that it is excessive. The sum paid as no fault liability during pendency of the proceedings was not taken into consideration to deduct the same from gross sum awarded as compensation. Secondly, it is contended that the multiplier chosen was improper. And thirdly, it is contended that the interest awarded could have been awarded from the date of adjudication and not from the date of accident.

6. Looking into the submissions as also the impugned judgment and Award, it does appear that, it is not in dispute that the employer of deceased Gajanan was Sandip Pandurang Kale, who was owner of the tractor in question. The dispute was in respect of monthly salary of Rs. 3,900/-. The only oral evidence adduced was that of Smt. Sunita Kale, which was relied upon by the Labour Court. According to the claimants, although they had approached owner of the tractor for compensation, he had refused to pay the same to them. It is contended by the applicants/claimants that both-the insurer as well as the insured for the said

tractor were answerable to pay compensation jointly and severally. Considering the multiplicand of Rs. 3,900/- p.m. on the basis of evidence that deceased Gajanan was 35 years of age with monthly salary of Rs. 3,900/-, the Commissioner considered 50 % amount out of Rs. 3,900/- with relevant factor to the age group of 35 years as per Schedule IV to the Workmen Compensation Act, 1923. The submission that appropriate multiplicand should have been considered at the sum of Rs. 3,000/- only is not acceptable as it would be contrary to the evidence on record. Looking to the factor 197.06 applied by the Commissioner for Workmen Compensation, Labour Court, Buldana, it cannot be branded as excessive or unreasonable.

7. The next contention that the award of interest ought to have been from the date of adjudication i.e. w.e.f. 18.10.2012 and not from the date of application is also not acceptable because of ruling on the subject in the case of *The Oriental Insurance Company Ltd. Vs. Siby George and Others*, . The Hon'ble Supreme Court considered the issue as to when the payment of compensation awarded under the Workmen Compensation Act, 1923 becomes due and at what point of time, interest would be payable on the amount of compensation provided u/s. 4-A(3) of the Workmen's Compensation Act. The Hon'ble Supreme Court considered earlier the rulings in the case of *National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another*, as also in the case of *Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another*, . The decision in the case of *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, (Four Judge Bench decision) was referred to, in which it was held that an employer becomes liable to pay compensation as soon as personal injury is caused to the workman by accident which arise out of and in the course of employment. Thus, the relevant date to be considered is the date of accident and not the date of adjudication of the claim. Reference was also made to the ruling in the case of *Kerala State Electricity Board vs. Vasala K.* reported in AIR 1999 II CLR 868 (Three Judge Bench of the Supreme Court), in which a reference was made to uniform view that the relevant date for determining the rights and liabilities of the parties is the date of the accident. Therefore, the legal position appears well settled that the amount of compensation is payable from the date of accident. Hence, no fault can be found with the impugned order by which interest @ 12 % p.a. was awarded to the applicants from the date of filing of the application till realisation of the entire amount. Considering the age group of 35 and looking into Schedule IV of the Workmen's Compensation Act, relevant factor referred to for age group of 35 in accordance with Schedule IV with reference to Section 4 of the Workmen Compensation Act is 197.06. Therefore, the impugned judgment and order cannot be faulted even on this count. That being so, there is no merit in the appeal.

No ground is made out for interference with the impugned judgment and order. Hence, the appeal is dismissed.