(2016) 04 BOM CK 0058

In the Bombay High Court

Case No : FA No. 3103 of 2015.

Varsha Santosh Birajdar and Others — APPELLANT

Vs

Sujata Ashok Pokharkar and another — RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 4(l)

Citation : (2016) 3 ACC 561 : (2017) ACJ 119 : (2016) 3 ALLMR 362 : (2016) 6 BCR 110 : (2016) 149 FLR 989 : (2016) 3 LLJ 600 : (2017) MCR 179 : (2016) 4 MhLJ 213 : (2016) 2 TAC 799

Hon'ble Judges : P.R. Bora, J.

Bench : Single Bench

Advocate : S.B. Gastgar, Advocate, for the Appellant; Rajendra Deshmukh, Advocate and V.R. Mundada, Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.R. Bora, J. - Aggrieved by the judgment and award passed in Workmen''s Compensation Application No. 37/2010 on 4th April, 2013, by the learned Commissioner for Employees Compensation, and Civil Judge, Senior Division, Osmanabad, (hereinafter referred to as Commissioner) the original claimants have preferred the present appeal.

2. The appellants had filed the aforesaid Workmen''s Compensation Application seeking compensation amounting to Rs. 7,00,000/- (Rs. seven lacs) on account of accidental death of their son. It was the contention of the appellants in the said application that their deceased son, namely, Santosh Birajdar was working as a Driver on Truck No. MH-18-A-7041 owned by present respondent No. 1. On 23.11.2009, while their deceased son was on duty, in the course of his employment, the alleged accident happened and in the accident so happened, their son suffered the death. It was the further contention of the appellants that the deceased was earning Rs. 6,000/- per month by way of his monthly salary and was also being paid daily Bhatta of Rs. 30/-. It was also the case of the

appellants that the truck involved in the accident was insured with respondent No. 2 Insurance Company.

3. Before the Workmen''s Compensation Commissioner, respondent No. 1 had raised a plea that the deceased was not employed by her at the relevant time but he had unauthorisedly taken away the truck and the accident happened whereas it was the case of respondent No. 2 Insurance Company that the offending truck was never insured with it.

4. The appellants i.e. original claimants adduced their oral evidence and also produced on record certain documents before the learned Commissioner. The learned Commissioner, on assessment of the oral and documentary evidence brought before him, has exonerated respondent No. 2 Insurance Company from the liability of paying any compensation as claimed in the application and held respondent No. 1 i.e. owner of the truck liable to pay the compensation to the appellants/claimants. Learned Commissioner assessed the compensation to the tune of Rs. 4,11,990/- and directed respondent No. 1 to pay the same to the claimants with interest thereon at the rate of Rs. 7.5 per cent per annum from the date of filing of the petition till its realization. Learned Commissioner has saddled respondent No. 1 with penalty of Rs. 2, 05, 950/- and has directed to pay the said amount also to the appellants with the interest thereon at the rate of 7.5 per cent from the date of filing of the petition till its realization. Out of the amount so awarded, an amount of Rs. 1,50,000/- was directed to be deposited in the name of petitioner No. 2 till he attains the age of majority and the balance amount was directed to be paid in equal shares to petitioner Nos. 1, 3 and 4.

5. Shri Gastgar, learned Counsel appearing for the appellants/original claimants submitted that the learned Commissioner has grossly erred in assessing the compensation by holding the income of the deceased to the tune of Rs. 4,000/- per month. Learned Counsel submitted that on the date of decision of the application as well as on the date of filing of the application, in view of the notification dated 31st May, 2010, the ceiling limit on the income for assessing the compensation under the Employees Compensation Act, 1923, was enhanced to Rs. 8,000/- per month and, as such, the learned Commissioner must have assessed the compensation by holding the income of the deceased to the tune of Rs. 8,000/- per month.

6. The submission so made and the objection so raised by the learned Counsel appearing for the appellants has been strongly resisted by Shri R.S. Deshmukh, learned Counsel appearing for respondent No. 1 i.e. the owner of the vehicle involved in the accident. Shri R.S. Deshmukh, learned Counsel, submitted that the notification dated 31st May, 2010, cannot be retrospectively made applicable. Learned Counsel further submitted that since the accident had occurred on 23.11.2009, the income of the deceased was liable to be held in accordance with the limit of ceiling existing at that time i.e. Rs. 4,000/- per month. According to the learned Counsel, the learned Commissioner has not, therefore, committed any mistake and the compensation assessed by the learned Commissioner is

correct and need not be enhanced.

7. Shri Gastgar, learned Counsel appearing for the appellants, has relied upon the judgment of the Honourable Apex Court in the case of New India Assurance Co. Ltd. v. V.K. Neelkandan and others (1999) 2 SCC 256) to support his contention that the benefit of increased limit of deemed income of a workman was liable to be extended in the case in hand.

8. During the course of the arguments, the learned Counsel for the appellant brought to my notice that original respondent No. 1 i.e. the owner of the truck involved in the alleged accident had preferred First Appeal No. 1522/2013, challenging the judgment passed in WCA No. 37/2010 and that this Court has dismissed the said appeal vide order passed on 16th May, 2015. The learned Counsel has placed on record copy of the said judgment. Shri R.S. Deshmukh, learned Counsel, has not disputed the fact so stated. Thus, the only question which now remains, pertains to the quantum of compensation.

9. From the pleadings raised in the memo of appeal and the points raised in the arguments advanced by the learned Counsel appearing for the respective parties, the question for my determination in the present appeal is:

" Whether the benefit of Government Notification dated 31.5.2010 whereby the monthly wages for the purpose of sub-section (1) of Section 4 of the Employees Compensation Act, 1923, are prescribed at the enhanced rate of Rs. 8000/- can be extended while assessing the compensation in the present case though the accident in question, had occurred on 23.11.2009 i.e. prior to coming into effect of the notification dated 31.5.2010 ?" Learned Commissioner has assessed the compensation holding the income of the deceased to the tune of Rs. 4,000/- per month having regard to the income limit provided under Section 4 of the Employees Compensation Act. It is true that the limit of the deemed income for assessment of compensation under the provisions of the Workmen''s Compensation Act was increased to Rs. 8,000/- per month vide notification dated 31st May, 2010 whereas the accident in question had occurred on 23.11.2009. Therefore, ostensibly, it appears that the learned Commissioner has not committed any mistake in assessing the compensation holding the income of the deceased on the basis of deemed income limit as was in existence on the date of the accident. Respondent No. 1 has also advanced similar argument and has supported the award passed by the learned Commissioner.

10. In view of the judgment of the Honourable Apex, Court relied upon by the appellants, in the case of New India Assurance Co. Ltd. v. V.K. Neelkandan and others (cited supra), however, the interpretation as has been made by the learned Commissioner that the increase in the deemed income vide notification 31st May, 2010, has to be prospectively made applicable, cannot be sustained has to be rejected. The Honourable Apex Court in the judgment cited supra has held that the Workmen''s Compensation Act, being a Special Legislation for the benefit of the labour, any benefit, if is conferred on the workmen, and the said

benefit is available on the date when the case is finally adjudicated, the said benefit should be extended to the workmen.

11. The facts in the case of New India Assurance Co. Ltd. v. V.K. Neelkandan and others (cited supra), were thus: the accident had taken place in the year 1981. As per the law operating at the relevant time , the deemed limit for the income of the workman was Rs. 1,000/- per month. The compensation in the said matter was, however, claimed stating the wages of the deceased workman to be Rs. 1800/- per month, which were being actually received by the said deceased workman. The compensation was, however, assessed by the Commissioner under the Act, deeming the wages as Rs. 1,000/- per month. In the meanwhile, Section 4 of the Act was amended in 1995 by Amendment Act (30 of 1995) where under the deemed income was increased from Rs. 1,000/- to Rs. 2,000/-. In the aforesaid background, the Honourable Apex Court ruled that the benefit conferred on the workman available on the date when the case is finally adjudicated was liable to be extended to the workman. The Honourable Apex Court, therefore, enhanced the amount of compensation by calculating the same on the basis of the actual wages of Rs. 8000/- being drawn by the deceased workman.

12. In the instant matter also though the salary income of the deceased workman was proved to be Rs. 6000/- per month, the learned Tribunal has assessed the compensation deeming the income of the deceased workman to the tune of Rs. 4,000/- per month having regard to the limit of income as provided under Section 4 of the Act, which was in existence on the date of the accident. Admittedly, the Workmen''s Compensation Application was filed on 7.8.2010 and was decided by the learned Commissioner on 4.4.2013. It is thus evident that in view of the judgment of the Honourable Apex Court cited supra, the Tribunal must have extended the benefit as was available on the date when the application so filed by the claimant was finally adjudicated. The award passed by the Commissioner, therefore, has to be modified.

13. Learned Counsel for the appellant was persuasive in his submission that the compensation needs to be assessed by deeming the income of the deceased workman to the tune of Rs. 8,000/- per month in view of increase in the deemed income vide notification dated 31st May, 2010. I am, however, not impressed with the submission so made. Admittedly, the income of the deceased, as stated by the claimants themselves, was Rs. 6,000/- per month. The compensation, therefore, will have to be assessed on the basis of the said income. Even in the aforesaid case cited supra, the Honourable Apex Court assessed the compensation on the basis of the actual wages which were being drawn by the deceased workman.

14. Holding the income of the deceased to the tune of Rs. 6,000/- per month, the compensation payable to the claimants would come to Rs. 6,17,880/- (50 % of the wages i.e. Rs. 3,000/- multiplied by the multiplicant of 205.96 as per the age of 31 years of the deceased). Simultaneously, the penalty amount will also

stand increased proportionately to Rs. 3,08,940/-.

15. I hold the appellants i.e. the original claimants entitled for the enhanced amount of compensation as well as the penalty as aforesaid from respondent No. 1.

16. The appeal stands allowed to the aforesaid extent.

17. The award passed in W.C.A.No.37/2010 by the learned Commissioner for Employee''s Compensation and Civil Judge, Senior Division, Osmanabad, dated 4.4.2013, stands modified to the aforesaid extent.