

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No. 1036 of 2006
With
CIVIL APPLICATION No. 4503 of 2006**

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO.LTD - Appellant(s)

Versus

NARENDRASINH N YADAV & 1 - Respondent(s)

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Appearance :

MS MEGHA JANI for Appellant(s) : 1,
None for Respondent(s) : 1,
MR NV ANJARIA for Respondent(s) : 1/1 to 1/5,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 31/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

Heard the learned advocates.

Both the learned advocates agree that the Appeal be heard and finally disposed of today.

The appellant before this Court is the New India Assurance Company Limited (hereinafter referred to as, **"the Insurance Company"**). The Insurance Company challenges the judgment and order dated 11th July, 2005 passed by the learned Commissioner for Workmen's Compensation and Labour Court, Gandhidham, Kachchh (hereinafter referred to as, **"the Commissioner"**) in Workman Compensation (Fatal) No.11/2000. By the impugned order the claimants - respondents herein have been awarded compensation in the sum of Rs.4,23,580=00 and interest @ 9 per cent per annum, the cost and the court fee stamp. The learned Commissioner has held that the appellant - Insurance Company shall be liable to pay the aforesaid amounts. While the respondent No.1 employer shall be liable to

pay penalty of Rs.1,000=00.

The Commissioner has noted that the deceased workman was serving under the respondent employer as a Cleaner. The accident in question occurred on 19th May, 1997 when the deceased workman was on duty on tanker bearing registration No.GJ/12/U/9880. At that time the deceased workman was 28 years of age. His monthly salary was Rs.5,000=00. For computation of amount of compensation, the Commissioner has calculated the monthly salary of Rs.2,000=00 (50% of the maximum of Rs.4,000=00) and a multiplier of 211.79.

Ms.Jani does not dispute that the deceased workman was employed by the respondent employer and that the Insurance Company is liable to pay compensation as may be awarded by the Commissioner. She does not dispute that the Commissioner has adopted a correct multiplier of 211.79. She has, however, submitted that the Commissioner has committed a grave error in computing the amount of compensation treating Rs.4,000=00 to be the deemed

salary. She has submitted that at the relevant time the monthly salary could not be more than Rs.1,000=00 (50% of maximum of Rs.2,000=00). She has submitted that under the prevalent provisions the Commissioner ought to have taken the monthly salary as Rs.1,000=00.

In support of her claim, she has relied upon Section 4 of the Act and the judgment of the Hon'ble Supreme Court in the matter of **Kerala State Electricity Board and another v/s. Valsala K. and another** [(1999)8 SCC 254].

In the aforesaid judgment the Hon'ble Supreme Court has recorded that, "...**an employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim.**"

Section 4 of the Act provides for amount of

compensation. Clause (a) of sub-section (1) thereof provides for the amount of compensation "where death results from the injury". It read (as stood on the date of the accident) :

"an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of fifty thousand rupees whichever is more;"

Explanation II thereof as it stood then read :

"Where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the purposes of Cls.(a) and (b) shall be deemed to be two thousand rupees only."

Thus, clause (a) of sub-section (1) of Section 4 of the Act read with the above referred Explanation II imposes a fetter upon the Commissioner in awarding compensation on the basis of the actual salary of a workman. In case the actual salary of a workman were more than specified maximum, the Commissioner is required to reduce the same to the statutory maximum.

In other words, that part of the wages which exceeds the statutory maximum, is required to be ignored while computing the amount of compensation. As held by the Hon'ble Supreme Court, the relevant date would be the date of the incident when the claimants became entitled to claim compensation. For the purpose of computation of compensation, the Commissioner was required to take the monthly salary of the deceased workman as Rs.1,000=00 (50% of the statutory maximum of Rs.2,000=00 as was prevalent then) instead of Rs.2,000=00 (50% of the statutory maximum of Rs.4,000=00 as was prevalent on the date of the adjudication). Considering the monthly salary of Rs.1,000=00 and a multiplier of 211.79, the claimants would be entitled to a compensation of Rs.2,11,790=00.

In above view of the matter, we partly allow this First Appeal. The impugned order of the learned Commissioner is modified to the effect that the respondents - claimants shall be entitled to receive compensation in the sum of Rs.2,11,790=00. The order for payment of interest, cost and the court fee is

confirmed. There shall be no order as to cost. Civil Application stands disposed of. Ad-interim order stands vacated.

The learned Commissioner shall pay the amount of compensation as computed hereinabove, to the claimants. The remainder of the amount shall be remitted to the appellant - Insurance Company.

(Ms. R.M.Doshit, J.)

(Harsha Devani, J.)

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