

**Atmaram and Another Vs. Prakash and Another**

**Atmaram and Another Vs. Prakash and Another**

**SooperKanoon Citation :** [sooperkanoon.com/1184708](http://sooperkanoon.com/1184708)

**Court :** Mumbai Aurangabad

**Decided On :** Apr-20-2016

**Judge :** V.K. Jadhav

**Appeal No. :** First Appeal No. 208 of 2002

**Appellant :** Atmaram and Another

**Respondent :** Prakash and Another

**Judgement :**

Oral Judgment:

1. Being aggrieved by the Judgment and Award dated 24.4.2001, passed by the learned Commissioner, Workmen's Compensation and Civil Judge S.D (Beed) in W.C.No.1 of 2000, the original claimants preferred this appeal to the extent of quantum.

2. Brief facts, giving rise to the present appeal, are as under:-

a] Deceased Bibhishan was working as a labourer with respondent no.1 Prakash since one year prior to his death for loading and unloading tractor bearing registration No.MH-23-3452 and trolley bearing registration No.MH-23-C-3569. On 20.9.1999 said tractor was proceeding to Beed from Kaij and on way one truck bearing registration No.AP-04-T-5121 coming from the opposite direction gave dash to the Tractor. In consequence of which, deceased Bibhishan had sustained

multiple injuries and died on the spot. The appellants/legal representatives preferred claim before the Commissioner, Workmen's Compensation for grant of compensation.

b] Respondent No.1 Employer has not disputed the employer-employee relationship, however, denied the liability on the ground that, the vehicle involved in the accident was insured with respondent no.2-insurer and therefore, he is not liable to pay the compensation. The Respondent insurer has strongly resisted the petition by filing written statement.

c] The learned Commissioner has partly allowed the W.C. and thereby directed the respondents to pay the compensation of Rs.1,17,700/- jointly and severally. Being aggrieved by the same, the original claimants preferred this appeal to the extent of quantum.

3. Learned counsel for the appellants submits that, the claimant no.1 has deposed before the Commissioner that his deceased son Bibhishan was getting Rs.70/- per day as wages. Learned counsel submits that, even respondent no.1 has also examined himself and supported this fact. Learned counsel submits that, the Commissioner has discarded his evidence on the ground that the employer has not maintained any register regarding the payment of wages to the labourers. Learned counsel submits that, the Commissioner has erroneously considered the wages of deceased Bibhishan to the tune of Rs.35/- per day. Learned counsel submits that, the Commissioner ought to have considered the wages of deceased Bibhishan @ Rs.70/- per day and accordingly calculated and awarded the compensation. Learned counsel submits that the Commissioner has also not awarded any interest. Learned counsel submits that interest to be paid from the date of accident to a workman as compensation falls due on this date. Learned counsel submits that, so far as the penalty to be imposed on the respondent-insurer is concerned, the claimant waives the same.

4. Learned counsel for respondent insurer submits that, the respondent employer has not maintained any register regarding payment of wages. Learned counsel submits that, the accident had taken place on 20.9.1999 and at that time the labourers were getting up to Rs.50/- per day and not more than that. Learned

counsel submits that, the Commissioner has rightly awarded the compensation by considering the wages of deceased Bibhishan @ Rs.35/- per day. Learned counsel submits that, no interference is required and thus appeal is liable to be dismissed with costs.

5. The claimant no.1 has deposed before the Commissioner that deceased Bibhishan was getting daily wages @ Rs.70/- per day. Moreover, the respondent-employer has also supported this fact. It appears that the learned Commissioner has discarded this evidence on the ground that the respondent employer has not maintained any register for payment of wages to the labourers. It appears from the evidence that respondent-employer is having only one Tractor and Trolley for carrying out his business. In these circumstances, it cannot be expected from him to keep or maintain any register regarding payment of wages to the labourers. There is nothing in his cross examination to disbelieve the respondent no.1 employer.

6. It appears from the impugned judgment and award that the Commissioner for no reasons considered the daily wages of deceased Bibhishan @ Rs.35/-. It further appears from the record that the respondent-insurer has not raised a ground before the Commissioner that at the relevant time, labourers were being paid @ Rs.50/- per day or less than that. In view of this, in my considered opinion, the Commissioner ought to have considered the daily wages of deceased Bibhishan @ Rs.70/- per day. Furthermore, the Commissioner has not awarded any interest. The respondent-employer has not denied the employer-employee relationship and he has also admitted that death of deceased Bibhishan had taken place out of and during the course of his employment. Thus, the compensation falls due within one month from the date of accident and since the same is not paid or deposited with the Commissioner concerned, the claimants are entitled for the interest @ 12% p.a.

7. Learned counsel for the appellant rightly places his reliance on a case Oriental Insurance Company Ltd. Vs. Siby George and others reported in 2012 DGLS (Soft) 427, wherein in paragraph no.4 of the Judgment the Supreme court has made following observations:-

"4. Mr. Mehra, learned counsel appearing for the appellant, submitted that the learned Commissioner was wrong in directing for payment of interest from the date of the accident and any interest on the amount of compensation would be payable only from the date of the order of the Commissioner. In support of the submission, he relied upon a decision of this Court in National Insurance Co. Ltd. vs. Mubasir Ahmed and Anr. (2007) 2 SCC 349, in which it was held that the compensation becomes due on the basis of the adjudication of the claim and hence, no interest can be levied prior to the date of the passing of the order determining the amount of compensation. In paragraph 9 of the decision the Court held and observed as follows:-

"9.....In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A (1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". .. Significantly, legislature has not used the expression "from the date of accident"... Unless there is an adjudication, the question of an amount falling due does not arise." (emphasis added)

8. In view of the above discussion, if it is considered that deceased Bibhishan was getting wages of Rs.70/- per day, then it corresponds to  $(70 \times 30) = \text{Rs.}2,100/-$  p. m. and 50% of the said amount of monthly wages is required to be considered for the loss of income. So in view of this, if the monthly dependency of Rs.1,000/- is multiplied by relevant factor 218.47, the total compensation comes to

Rs.2,18,470/-. Hence, the claimants are entitled for the same. Hence, following order.

## **ORDER**

I. Appeal is hereby partly allowed with proportionate costs.

II. The Judgment and Award dated 24.4.2001 passed by the learned Commissioner, Workmen's Compensation and Civil Judge (S.D.), Beed in W.C.No.1 of 2000 is hereby modified in the following manner :-

"The Respondents No.1 and 2 do pay jointly and severally compensation of Rs.2,18,470/- (Rs.Two lacs eighteen thousand four hundred and seventy only) alongwith interest @ 12% p.a. from one month of the date of accident i.e. 20.10.1999, till realization of the entire amount."

III. Amount already granted as per the award passed by the Commissioner Workmen's Compensation and Civil Judge (S.D.) Beed, shall be deducted from the modified award.

IV. Award be drawn up in tune with the modifications as aforesaid.

V. Appeal is accordingly disposed of.

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**