

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil First Appeal No. 196/2022

1. Bajaj Allianz General Insurance Company Limited, B.g.p. House, Ground Floor, 88-C Old Prabhadevi Road, Mumbai 400025 Through Manager
2. Bajaj Allianz General Insurance Company Limited, Panchsheel Circle, Bikaner Through Its Principal Officer

----Appellants

Versus

1. Sharda W/o Shri Premaram @ Premratan, R/o Village-Kakku, P.s. Panchu, Tehsil Nokha, District Bikaner.
2. Prabhuram S/o Shri Chokharam, R/o Village-Kakku, P.s. Panchu, Tehsil Nokha, District Bikaner.
3. Teji W/o Shri Prabhuram, B/c Meghwal R/o Village-Kakku, P.s. Panchu, Tehsil Nokha, District Bikaner.
4. Sahiram Vishnoi S/o Dularam, B/c Vishnoi, R/o Village Roda, Police Station, Nokha, Bikaner (Supervisor)
5. Ajeej Kulkarni, Managing Director, Pratibha Industries Limited Nagaur Lift Canal Project, 135-A Sadulganj, Bikaner.
6. Pratibha Industries Limited, 135-A Sadulganj, Bikaner.

----Respondents

For Appellant(s) : Mr. Dhanpat Choudhary

HON'BLE MR. JUSTICE RAMESHWAR VYAS

Judgment

24/05/2022

The instant appeal has been filed by the Insurance Company (defendant in the claim petition) against the judgment and decree dated 23.10.2021 passed by the Additional District Judge No.4, Bikaner in Civil Original Suit No. 07/2020, whereby while allowing the suit filed by the dependents of the deceased Premaram @ Premratan under the Fatal Accident Act,

compensation of Rs.5,94,160/- has been awarded for which employer, Pratibha Industries Limited Nagaur, its Supervisor, Managing Director and Insurance Company were made liable jointly and severely.

Brief facts of the case are as under:

Deceased Premaram @ Premratan was an employee in Pratibha Industries Ltd. He died on 18.6.2008, during the course of his employment, while he was doing work of removing soil from the pipeline in the ditch. The masala mixture machine fell upon him as a result of which he collapsed. At the time of his death, he was aged 25 years and earning Rs.250/- per day in lieu of labour work. At that time, defendant nos. 1 and 2 were Supervisor and Managing Director of the Pratibha Industries Ltd. The incident was reported to the police, upon which FIR No. 231/2008 under Section 302 and 287 IPC was registered. All the employees working under Pratibha Industries Ltd. were insured under the Workmen's Compensation Act, 1923 (now amended as The Employees's Compensation Act, 1923 w.e.f. 18.1.2010) (hereinafter referred to as 'the Act of 1923').

After trial, the learned trial court decreed the suit. Aggrieved with the same, this first appeal has been filed.

Learned counsel for the appellants during arguments on admission submits that the insurance company issued policy in the category of workmen compensation for 30 employees drawing salary less than Rs.4,000/-. Since deceased was employee of Pratibha Industries Ltd., the dependents of deceased had remedy to file claim petition under the Employee's Compensation Act, 1923. Insurance Company is liable only under the provisions of the Act of 1923. He also submits that wife of the deceased has re-

married, so she is not entitled to get the compensation. He further submits that the Insurance Company was impleaded as party respondent only on 30.11.2010 at a belated stage.

Learned counsel for the appellants also submits that the income of the deceased was more than Rs.4,000/- per month, whereas, the insurance was with regard to workers drawing salary less than Rs.4,000/- per month each. At the time of incident, no security measures were provided to the employees by the employer. Therefore, the conditions of the policy have also been violated. Learned counsel for the appellants further submits that the deceased was working for sub-contractor.

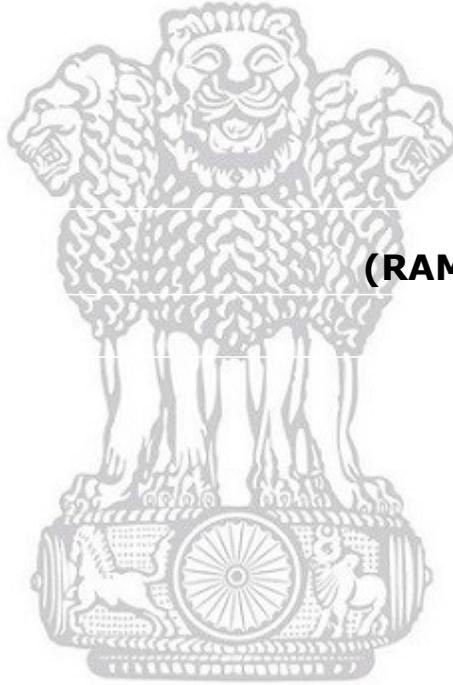
Considered the arguments raised by the learned counsel for the appellants and perused the record.

It is not in dispute that the deceased was an employee of Pratibha Industries Ltd. It is also not in dispute that Workmen Compensation Policy issued in favour of Pratibha Industries Ltd. by the appellant - Insurance Company was in force at the time of incident. It is not in dispute that the compensation was assessed on the monthly income of Rs. 2600/- of the deceased, which is below Rs.4,000/- per month. Regarding not filing claim under the Act of 1923, it is made clear that though claimants had remedy under the Act of 1923 also, however, there is no bar to file suit for compensation under the provisions of Fatal Accident Act, 1855. The provisions of Fatal Accident Act, 1855 applies against all wrong doers including the employer. The scope of the provisions of Fatal Accident Act, 1855 is wider than the scope of Act of 1923. Civil Courts are competent to entertain any civil dispute unless it is barred by any law. There is no bar under any provisions of law to claim compensation under the Fatal Accident Act by employee

against his employer. Hence, the contention of the learned counsel for the appellant in this regard is *prima facie* not tenable.

The other grounds raised by the learned counsel for the appellants are also not tenable. Contention with regard to re-marrying of the deceased's wife is concerned, the same does not disentitle her from claiming compensation for death of her husband. The amount of compensation awarded by the learned trial court looking to the young age of the deceased and number of claimants cannot be said to be unreasonable. There is no merit in this appeal.

Accordingly, this first appeal stands dismissed at admission stage.



(RAMESHWAR VYAS),J

6-Mak/-

सत्यमेव जयते