

Bombay High Court

2 Mrs.Pushpa Siddharth Survase vs Air India Charters Ltd on 26 September, 2013

Bench: A.P. Bhangale

Tilak

1/36

FA-1122-13

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1122 OF 2013

1 Siddharth Sambhaji Survase  
Aged 61 yrs, Occ.Retired  
Bank Officer

2 Mrs.Pushpa Siddharth Survase  
Aged 58 yrs, Occ: Housewife,

Both residing at 11/C-12, Sankalpana  
CHS Ltd, MHADA, S.V.P. Nagar,

4 Bungalows, Andheri (West)  
Mumbai- 400 058.

...

Appellants

Versus

Air India Charters Ltd.  
2nd floor, Finance Building,

Old Airport, Santacruz(E),  
Mumbai 400 029.

...

Respondent

. . .

Mr.Shailesh Naidu with Mr.Amit Survase, Mr.Afroz Shah i/b C.R.Naidu & Co. for the appellant.

Mr.Firoz Bharucha and Mr.Siddhant Vakil i/b Mulla & Mulla for the respondent.

CORAM : A.P. BHANGALE, J JUDGEMENT RESERVED : SEPTEMBER 03, 2013 JUDGMENT PRONOUNCED: SEPTEMBER 26, 2013 Tilak 2/36 FA-1122-13 JUDGEMENT :-

1 This appeal is taken up for final hearing by consent. The appeal is preferred under Section 30(1) (c) of the Employee's Compensation Act, 1923(hereinafter referred to as 'Act'.) Heard submissions at the bar at length with reference to the compilation filed on behalf of the appellant of the recorded evidence and copies of annexures and Judgment by Learned Commissioner.

2 Facts are that on 22-05-2010, an Air crash accident occurred at Mangalore in which 158 persons were killed which, inter alia, included passengers and crew members of ill fated Air plane. Miss Sujata Siddharth Survase (Daughter of Appellants Siddharth and Mrs Pushpa) was one of them. The grievance of the appellants is limited against the order dated 15-04-2013 passed by the Commissioner for Employees Compensation, whereby direction was given for deduction of the amount of Rs Ten Lakhs earlier paid as interim compensation from the amount of Rs.25,87,655/- deposited Tilak 3/36 FA-1122-13 by the Employer Air India Charter Ltd under the Employees Compensation Act. The amount was payable to the dependents of the young teenaged employee Ms Sujata Siddhartha Survase who fell victim in the Mangalore Air Crash.

3 The Employer informed appellants that by letter dated 13-07-2012 the employer had deposited the amount of Rs 25,63,506/-(24,208/-Monthly salary x 50% x 211.79) on 06-07-2012 vide Cheque no. 006256 dated 10-07-2012 as compensation provided under the Act, required to be deposited under Section 8(1) of the Employees Compensation Act, before Learned Commissioner empowered to distribute the compensation amount. Employer had earlier paid interim compensation in the sum of Rs Ten Lakhs vide Cheque no.

005190 dated 14-06-2012 to the dependent claimants on account of Siddharth Survase (Father of deceased employee) and informed by letter dated 15th June 2010 thus:-

Dear Sir, The tragic death of your daughter Miss Sujata.S.Survase in the unfortunate Tilak 4/36 FA-1122-13 tragedy of our flight IX-812 of 22nd May 2010 was a big shock to all of us. We want you to know that our thoughts are with you and your family during this difficult time.

We also want you to know that Air India Express will always remember the services rendered by your daughter Miss Sujata S. survase to the Company.

Enclose herewith please find Cheque No. 5190 Dated 14th June 2010 for Rs 10,00,000/- as an interim compensation to be adjusted out of the amount of

compensation to be paid by Air India Charters Limited.

Also enclosed herewith please find Cheque No 5489 Dated 14th June 2010 for Rs 2,00,000/- from the Prime Minister's Relief fund.

May God give you the courage to get over this tragedy.

S/d  
Chief Operating Officer  
Air India Express

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To Shri  
Siddharth S. Survase  
11/12, Sankalpana C.H.S.SVP Nagar

MHADA Complex, Four Bungalows Andheri West Mumbai -400 053 Thus, Company claimed refund from the amount deposited with the commissioner during the pendency of the proceeding before the Commissioner.

4 It is not disputed by the Appellant that on 13 th July 2012 they were informed by the respondent Employer that amount of Rs.25,63,506/- was deposited with the Commissioner as compensation payable to dependents of Ms Sujata Siddhartha Survase as per the provisions of the Employees Compensation Act, 1923. It is contended that the learned Commissioner ought to allow set off only to the extent of an amount equal to three month's Wages paid directly by the Employer to the dependents of the deceased employee and not for any more amount because according to Learned counsel for the Appellant, Section 8(1) of the Act prohibits an Employer from directly making payment of Compensation to the dependent of the employee and any payment made directly to Tilak 6/36 FA-1122-13 the employee beyond three months shall not be deemed to be compensation. Thus, it is contended on behalf of the Appellant that commissioner can not direct deduction of the amount exceeding three months Salary/wages from the amount deposited. Thus, according to the learned

counsel for the appellant the amount exceeding sum of Rs.72,624/- could not have been deducted from the statutory amount deposited by the Employer.

{A}The substantial question posed  
before this Court is whether the

Commissioner was justified to direct deduction and refund of the amount of Rs Ten Lakhs as surplus paid by the Employer as interim compensation to the dependents of the deceased employee Air crew Sujatha Sidharth Survase from the amount deposited by the employer as the total sum required to be deposited by the Employer with the Commissioner as compensation provided for under the Act?

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{B} What Order?

My answer considering the facts and circumstances of the case to point {A} is affirmative and to point {B} is that the appeal must be dismissed with no order as to costs under the circumstances as per final order.

5 Learned Counsel for the Appellant placed reliance upon the ruling in Kathleen Dias Vs.H.M. Coria reported in LAWS (Cal)-1951-2-16. In that case the Employer had issued a Cheque as ex-gratia payment which was acknowledged by the dependents of the deceased workman. Later, when claim was made with the Commissioner, compensation was granted only in the sum of Rs 475/- after deduction of the sum of Rs.

3000/- paid as an ex-gratia payment. Section 17 of the Act, it is held that protects ignorant workman who may be induced by the employer to agree to less compensation, or to abandon something which the workman is entitled to claim under the Act. If the employer pays on his own to the workman he does Tilak 8/36 FA-1122-13 so with the risk that he will not be entitled to get set off for a sum so paid. Further as a contract it should have been registered under Section 28 of the Act. Calcutta High Court held when that was not done, the employer was not entitled to get a set off for the sum paid Rs 3000/- to the workman. The ruling referred to the prohibition contained in Section 8 of the Act from direct payment to the workman as it shall not be deemed as compensation but as an ex gratia payment.

6 Learned Counsel for the Appellant then referred to the ruling in Bai Chanchal Ben Vs. Burjorji Dinshawji LAWS(GJH)-1968-11-11. In this case, the amount of compensation was payable in the

sum of Rs 3000/- but the Commissioner ordered the award of sum of Rs 1500/- as payable having deducted the sum of Rs 1500/- earlier paid by the employer. Following the ruling in Kathleen Dias, Gujarat High Court allowed the appeal by modifying the award in the sum of Rs 3000/-.

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7 Third ruling referred by Shri Naidu is Divisional

Engineer M. P. Electricity Board Vs Mantobai LAWS(MPH)

-1988-7-15. The question raised was as to whether the Commissioner or Court in appeal has jurisdiction to give credit to any direct payment in the nature of ex gratia compensation under any statutory provision or Contract and whether any compensation payable under the Act is liable to be reduced by such payment? Under the Act in case of workman's death the mode of payment is specified. It is by way of deposit with the Commissioner. Section 8 read with Section 28 and 29 of the Act contains statutory bar against any payment to be made directly by an employer against any amount due and payable as compensation.

8 Fourth ruling which is pressed in to service by Shri Naidu is Nasira Nazir Vs. Executive Engineer 1999 III-LLJ-

(Suppl) 112 (J&K High Court). It was held that the provisions of section 8 are designed to protect the heirs and legal representatives of the deceased workman against any Tilak 10/36 FA-1122-13 kind of exploitation or fraud likely to be practiced on them by, or on behalf of the employer or any third party, hence neither Commissioner nor the appellate Court under the Act have any jurisdiction to give any credit for any payment of any nature made to deceased dependents including any payment in the nature of ex gratia compensation either made under any statutory provision or under a Contract. In this case, the payment made of ex gratia sum as well as employment given to the son of the deceased Workman was not considered as a ground to absolve the employer of his liability under the Workmen 's Compensation Act.

9 Fifth ruling referred by Shri Naidu is Shah Vs Rajankutty LAWS(KER)-2005-7-68. In this case, the advance payment was made towards funeral and other expenses.

Division Bench of Kerala High Court held in view of section 8 of the Act that the entire Compensation has to be deposited with the Commissioner. If any advance is made towards Compensation maximum three months wages can be deducted Tilak 11/36 FA-1122-13 by the Commissioner. Claim for deduction of the sum paid by way of an ex gratia under the unregistered agreement cannot be deducted by the Commissioner from the amount of compensation payable under the Act.

10 Sixth ruling referred is Jamnagar Municipal Corporation Vs Rajesh Laljibhai Kabira etc. 2010(125) FLR 997 Gujarat High Court. It refers to the legal position that the compensation has to

be deposited with the Commissioner, and not to be paid otherwise by the employer. The provisions of the Act are designed to protect the heirs of the deceased workman against any kind of exploitation or fraud likely to be practiced on them by or on behalf of the employer or any third party.

11 Learned Counsel for the appellant also invited my attention to the ruling in Suchitra Devi Vs. Presiding officer, Labour Court and another (1996) 8 SCC 70. The Apex Court did not enter into discussion as to whether the amount was rightly deducted or not, observing thus:-

Tilak 12/36 FA-1122-13 "2. We have heard Mr Dipankar Gupta, learned Solicitor General. There is considerable plausibility in the contentions raised by him but in the facts and circumstances of this case we are not inclined to agree with him. We do not wish to go into the question as to whether the Management rightly deducted Rs. 10,000 from the compensation amount or not. Keeping in view the ghastly tragedy and the misery which must have fallen on the family of the deceased workmen, we are of the view that the deduction made was wholly unjustified. We therefore set aside the impugned order of the Labour Court and the High Court and direct the Management to pay a sum of Rs. 10,000 to each of the workman's heirs/family with 12% interest from January 1, 1983.

12 It is settled principle of law that when a Statute requires anything to be done in a particular manner, it has to be done only in that manner and no other manner. Section 8 of the Act require the employer to deposit the full amount Tilak 13/36 FA-1122-13 provided as compensation payable to the dependents of the employee with the Commissioner. The Legislature therefore to prevent fraud or undue influence by or on behalf of the Employer, and to protect the right of the employee or his/her dependents right to receive just compensation provided that the payment of compensation otherwise than by deposit with the Commissioner is deemed as no payment of compensation, because Contracting out of the Statute is not permissible for any employer liable to pay compensation provided under the Act. Therefore, there is statutory bar for the employer to pay directly to the employee any amount which is payable as 'compensation' under the Act. At this stage, it is necessary to refer relevant provisions of the Act and bear them in mind.

Section 2 Definitions (1)In this Act, unless there is anything repugnant in the subject or context,-

(a) \* \* \*] [a] Clause (a) omitted by the Workmen's Tilak 14/36 FA-1122-13 Compensation (Amendment) Act, 1959(8 of 1959), S.2 (1-6-1959).

(b) "Commissioner" means a Commissioner for Workmen's compensation appointed under section 20;

(c) "compensation" means compensation as provided for by this Act, (emphasis mine) Section 4. Amount of compensation (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :-

(a) Where death results An amount equal to fifty percent from the injury of the monthly wages of the deceased workman multiplied by the relevant factor;

or An amount of fifty thousand rupees, whichever is more;

(b) Where permanent an amount equal to sixty percent total disablement of the monthly wages of the results from the injury injured workman multiplied by the relevant factor or An amount of sixty thousand rupees, whichever is more;

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The relevant factor applicable was 211.79 x

monthly salary of Rs 24208/- divided by 50% of the deceased employee. Thus, the sum calculated at Rs. 25,63,506/- was deposited by the Employer with the Commissioner.

Section 8 reads thus:-

8. Distribution, of compensation (1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by the deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

(b) provided that, in the case of a deceased workman, an employer may make to any dependent advances on account of compensation of an amount equal to three months wages of such workman and so much of such amount as does not exceed the compensation payable to that dependent shall be deducted by the Commissioner from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than ten Tilak 16/36 FA-1122-13 rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1) as compensation in respect of a deceased workman the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependent in such manner as he thinks fit, calling upon the dependents to appear before him on such date as he may fix for determining the distribution to the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependent exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

Tilak 17/36 FA-1122-13 (5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependents of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the

discretion of the Commissioner, be allotted to any one dependent.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability in such manner as the Commissioner may direct;

and where a half monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any Tilak 18/36 FA-1122-13 dependent of the workman or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the workman.] [(8)] Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependent or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be invested applied or otherwise dealt with ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case :. Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependent of any sum already paid to him.

[(9) Where the Commissioner varies any order under sub-section (8) by reason of the fact that Tilak 19/36 FA-1122-13 payment of compensation to any person has been obtained by fraud, impersonation or other improper means any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

10A. Power to require from employers statements regarding fatal accident (1) Where Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether in the opinion of the employer, he is or is not liable to deposit compensation on account of the death. (2) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(3) Where the employer has so disclaimed liability, the Commissioner, after such enquiry as he may think fit, may inform any of the of the deceased workman that it is open to the dependents to prefer a claim for compensation, and may give them such other further information as he may think fit.] Section 17. Contracting out (2) Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of



compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

19. Reference to Commissioners (1) If any question arises in any proceedings under this Act, as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a [a Commissioner.] (2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

23. Powers and procedure of Commissioners The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath which such Commissioner is hereby empowered to impose and of enforcing the attendance of witnesses and compelling the production of documents and material objects, a [and the Commissioner shall be deemed to be a Civil Court for all the purposes of b [section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973.

14 Section 23 clearly indicate powers of the

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Commissioner like Civil Court to record evidence and it is  
deemed to be a Civil court. Learned Counsel for the

respondent argued that the object of the Act is to provide full compensation to the dependents of the Workman/employee as provided under the Act and not to bestow undue or unjust enrichment upon the dependents of the deceased employee.

Learned counsel for the respondent submitted that the appellants are not uneducated or illiterate, they are income Tax assesess with valid Pan number allotted to them and had consciously accepted

the interim compensation by Cheque without raising any protest. Mr. Bharucha relied upon the ruling in Rajasthan State Industrial development and Investment Corporation and another Vs. Diamond and Gem development Corporation Ltd and another reported in AIR 2013 SC 1241, a Party can not be allowed to approbate and reprobate.

15 A party cannot be permitted to "blow hot-blow

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cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience. (Vide: Nagubai Ammal & Ors. v. B. Shama Rao & Ors., AIR 1956 SC 593; C.I.T. Madras v. Mr. P. F irm Muar, AIR 1965 SC 1216;

Ramesh Chandra Sankla etc. Vs. Vikram Cement etc., AIR 2009 SC 713; Pradeep Oil Corporation Vs. Municipal Corporation of Delhi & Anr., AIR 2011 SC 1869; Cauvery Coffee Traders, Mangalore v. Hornor Resources (International) Company Limited, (2011) 10 SCC 420; and V. Chandrasekaran & Anr. v. The Administrative Officer & Ors., JT 2012 (9) SC 260).

16 Thus, it is evident that the doctrine of election is

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based on the rule of estoppel - the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable

estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

Next ruling cited is In Oriental insurance Co. Ltd Vs. Dyamavva and another reported in 2013 AIR SCW 1506 Hon'ble supreme Court held with reference to section 8 of the Act thus :-

" Sub-sections (1) to (3) of Section 8 extracted above, leave no room for any doubt, that when a workman during the course of his employment suffers injuries resulting in his death, the employer has to deposit the compensation payable,with the Workmen's Compensation Commissioner. Payment made by the employer directly to the dependents is not recognized as a valid disbursement of compensation.

Tilak 25/36 FA-1122-13 The procedure envisaged in Section 8 of the Workmen's Compensation Act, 1923, can be invoked only by the employer for depositing compensation with the Workmen's Compensation Commissioner.

Consequent upon such "suo motu" deposit of compensation (by the employer) with the Workman's Compensation Commissioner, the Commissioner may (or may not) summon the dependents of the concerned employee, to appear Section 8 before him under sub-section (4) of aforesaid. Having satisfied himself about the entitlement (or otherwise) of the dependents to such compensation, the Commissioner is then required to order the rightful apportionment thereof amongst the dependents, under sub-sections (5) to (9) of Section 8 of the Workmen's Compensation Act, 1923. Surplus, if any, has to be returned to the employer."(emphasis mine) One more submission is advanced on behalf of the Appellant on the ground that the Shri Praful Patel, then Minister of Civil Aviation had after the accident, announced before media that Tilak 26/36 FA-1122-13 sum of Rs 72 Lakhs would be paid as ex gratia compensation for each of the deceased in Mangalore airplane crash to his dependents pursuant to amendment in carriage by Air (Amendment) Act as India is signatory to the Montreal Convention. The submission for want of legal evidence cannot be considered in this appeal. It is also outside the present controversy of compensation payable as provided under the Employees Compensation Act,1923. The object of the Employees Compensation Act is to pay compensation to the employee as provided under the Act. This is beneficial legislation to be construed liberally. The provisions of the Act are also quasi-penal in character to ensure that the sum of compensation payable under the Act is provided under the Act is deposited by the employee with the Commissioner under the Act and no contracting out of the Act is permitted between the employee and the employer bypassing the forum of the Commissioner, therefore the amount of compensation provided under the Act has to be deposited with the Commissioner under the Act. Commissioner has exclusive power alike civil Tilak 27/36 FA-1122-13 court to frame issues which may legitimately arise in the case to decide the amount of compensation payable as provided under the Act and in the death claim cases as to who are the 'dependents' of the deceased employee concerned and how the amount of compensation payable under the Act is to be distributed amongst the dependents. The compensation is just, fair and equitable sum payable as provided under the Act and not a bonanza or jackpot for the dependents of the deceased.

While interpreting the provisions of the Act, the court will adopt that which is just, reasonable, rational and sensible, rather than which is none of those things. The provisions of the Act can not be construed in such manner so as to result in undue and unjustified enrichment for the dependents of the deceased employee at the cost of public money possessed by corporate body. Under Section 2 (b), the compensation means compensation as provided for by this Act, neither more nor less. The propriety demanded that commissioner in the facts and circumstances could not have without a valid reason caused unjust increase to the legal liability of the employer to Tilak 28/36 FA-1122-13 pay amount of compensation provided under the Act, so as to make it payable more than what is provided and payable under the Act. This Court has held in the ruling of B.T Shipping London Limited Vs. Arati Narayanan 2000 (2) Mah LJ 832= 2000(3) Bom.CR 381 His Lordship Justice Shri R.N.

Lodha (As his Lordship then was ) for Bombay High Court held that Commissioner can not award compensation exceeding one prescribed under the Act. In para 9 it is observed thus:-

" 9. A conjoint reading of the aforesaid sections would show that the Workmen's Compensation Commissioner can order the employer to deposit further sum if in his opinion the amount so deposited is insufficient as provided under the Act. Schedule IV under section 4 provides the factors for working out lump sum amount for compensation in case of total disablement and/ or death. Obviously, in the very scheme of the Act, 1923, the Workmen's Compensation Commissioner cannot order the employer to deposit the amount which exceeds the amount prescribed under the Act. In other words the scale of compensation set out in Schedule IV under section 4 is the compensation that can be awarded by Tilak 29/36 FA-1122-13 the Commissioner under the Act and not beyond it.

There is no dispute before me that the amount of Rs.34,13,330/- deposited by the 2nd petitioner before the Workmen's Compensation Commissioner is far larger than the Compensation under the Act for the death of the deceased workman. The objective of the Workmen's Compensation Act is to ensure that in the case of injury or permanent disablement or death of a workman by accident out of and in the course of employment, his employer pays him compensation in accordance with the provisions contained in the Workmen's Compensation Act and such employee who has suffered injuries or permanent disablement or the dependents of the deceased employee are not left high and dry. Therefore, the compensation that can be awarded by the Workmen's Compensation Commissioner has to be in accordance with the compensation prescribed under the Act of 1923 and not exceeding thereto. Even in exercise of his powers under section 22-A the Workmen's Compensation Commissioner can only order the employer to deposit further amount if he finds and is satisfied that the amount deposited by the employer is less than the compensation prescribed under the Act. The adequacy of deposit has to be seen by the Workmen's Compensation Commissioner to the extent and in the Tilak 30/36 FA-1122-13 light of compensation prescribed under the Act and not beyond it. Mr.Vaidya, the learned counsel appearing for respondent nos.2, 3 and 4 referred to sections 17 and 19(2) of the Act and urged that it is open to the employer to enter into an agreement for the compensation exceeding the amount of compensation provided under the Act. According to him, in the service conditions there was an agreement that in the event of death or

permanent disability resulting from injuries/accidental causes whilst on board the vessel, the employer would provide cover in accordance with Appendix E to a maximum of three and a half times annual pay and, therefore, the dependents- respondent nos. 2, 3 and 4 are entitled to compensation to three and a half times annual pay of deceased and, therefore, the Commissioner did not commit any error in directing the employer to deposit further sum. I am afraid sections 17 and 19(2) which have been relied upon by Mr. Vaidya in support of his contention does not support him at all. Section 17 provides that any contract or agreement whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of employment shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act. The Tilak 31/36 FA-1122-13 service conditions in which it has been agreed by the company to provide cover to the deceased in accordance with Appendix E to a maximum of three and a half times annual pay is not related to section

17. It is open to the dependents to enforce their claim as per the agreement in the service conditions in accordance with law but it cannot empower the Workmen's Compensation Commissioner to award or order for deposit of compensation of that amount which exceeds the compensation prescribed under the Act. Section 19(2) of the Act of 1923 only provides that no civil court shall have jurisdiction to settle, decide and deal with any question which is by or under the Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under the Act. For enforcement of the clause in the service conditions whereby the employer has undertaken to provide cover in accordance with Appendix E to a maximum of three and a half times annual pay can be enforced through civil court and jurisdiction of civil court to that extent cannot be said to be barred under section 19(2). So far as the Workmen's Compensation Commissioner under the Act of 1923 is concerned he is only empowered to award compensation or order deposit of compensation as prescribed under Tilak 32/36 FA-1122-13 the Act and not exceeding thereto."

(emphasis mine) 18 According to learned Counsel, the Minister concerned for Civil aviation had in his statement to the media announced that the Government would pay Rs 72 Lakhs to dependents of each of the deceased in that Mishap as payable under the Air carriage law adopted pursuant to Montreal convention. The statement, in my humble opinion, cannot bind the Respondent herein unless there is legal evidence to support such argument. In the case in hand, the compensation required to be provided is compensation under the Employees Compensation Act and not beyond.

19 Law can not be construed as harsh to such employer who bonafide without intending to avoid liability under the Act offers interim compensation with clear indication to the defendants of the employee that the amount paid is to be adjusted towards compensation as provided and payable under the Act. It may be construed as harsh to those who may Tilak 33/36 FA-1122-13 be fraudulent or dishonest employer who may try to avoid lawful liability by adopting clandestine methods, contracting out etc. as means to cause wrongful loss to the defendants of the deceased employees.

20 Therefore in the facts and circumstances of the present case, no fault can be found with the commissioner's judgment and order impugned herein, for his decision to deduct the surplus amount refundable to the employer as it was a sum advanced as interim compensation to the dependents of the deceased particularly mentioned as adjustable from the compensation to be paid. When the

employer gave advance unequivocally mentioned as interim payment and adjustable from the compensation to be paid, it could not have been construed as ex-gratia payment made to the dependents when it was accepted without protest towards interim compensation. In the facts of the case the dependents of the deceased employee were not illiterate or uneducated persons. They are income tax assesses with allotted PAN Tilak 34/36 FA-1122-13 numbers and had consciously accepted the advance of interim compensation from the employer. Thus employer can not be penalised for good unilateral gesture of making advance interim payment of compensation, particularly when the employer had observed strict obedience to the provisions of the Act to deposit the entire sum of compensation as payable and provided for under the Act with the commissioner and then requested the Commissioner to refund the excess/surplus sum advanced as interim compensation. The Commissioner to my mind acted as reasonable, prudent and equitable person in the facts and circumstances of the case to direct deduction of the excess / surplus amount with him which was refundable to the Employer from the total sum deposited as compensation provided under the Act. I am bound by the view adopted by this Court and expressed by the Apex Court as mentioned above. The rulings by other High Courts which are cited on behalf of the Appellants have mere persuasive value, but could not persuade me to accept the contrary view for the aforesaid reasons. Furthermore the letter dated 15-06-2010 from the Tilak 35/36 FA-1122-13 respondent addressed to the claimant Siddharth Survase had made clear that the amount of compensation in the sum of Rs Ten Lakhs was advanced as interim compensation to be adjusted out of the amount of the compensation to be paid by Air India Charter Limited. In the facts and circumstances, therefore to conclude the appeal following order must be passed:-

**ig O R D E R** After the amount of compensation as provided under the Employees compensation Act, 1923 along with the interest reasonable @ 12% interest per annum from the date of the accident till the deposit made with the commissioners is paid to the dependents of the deceased employee in the case, the surplus amount remaining in balance, after deduction of the compensation amount plus the amount payable towards interest as above to the dependents of the deceased, surplus money on accounts, ought to be refunded by the Commissioner Tilak 36/36 FA-1122-13 under the Act to the employer-Appellant. Hence, Commissioner's direction in the impugned order is found without fault. The appeal is found without merits and is dismissed accordingly. No order as to costs.

(ASHOK P. BHANGALE,J)