

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**First Appeal No.1355 of 2014
With
Civil Application 7223 of 2014**

* Mankarnabai W/o Dadarao Mohite,
Age 52 years,
Occupation : Household,
R/o At Kopramba, Taluka Mantha,
District Jalna. **.. Appellant.**

Versus

- 1) The Manager,
Soletch Industries Ltd.,
M-22, Block No.22, M.I.D.C.
Nagapur, Ahmednagar,
Taluka and District Ahmednagar.
- 2) The Manager,
New India Assurance Co. Ltd.,
Nagar Pune Road,
Near Ashoka Hotel, Ahmednagar
Taluka and District Ahmednagar.
- 3) Dadarao S/o Sahebrao Mohite,
Age 57 years,
Occupation : Service,
R/o Motigavan,
Taluka and District Jalna. **.. Respondents.**

Shri. Sudarshn J. Salunke, Advocate, for appellant.

Shri. A.G. Kanade, Advocate, for respondent No.2.

Shri. S.L. Awchar, Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 14th JULY 2015

JUDGMENT:

1) The appeal is filed to challenge the order made by the Commissioner appointed under the Workmen's Compensation Act at Jalna (Labour Court, Jalna) in Misc Application No.1/2014 filed by the present appellant for making disbursement of the compensation amount deposited with the Commissioner. The Commissioner has made order of disbursement and has directed to pay 50% of the amount of compensation to the appellant and the remaining 50% amount is to be paid to respondent Dadarao, the father of the deceased. Both the sides are heard.

2) It is the case of the appellant that original proceeding for compensation was filed by her and only because present respondent Dadarao is the father of the deceased he was made party to the proceeding. It is her case that when the application filed for compensation bearing W.C. Application No.1/2013 was considered and

decided, it was not the case of the present respondent Dadarao that he was dependent on the deceased for his livelihood. It is submitted that respondent Dadarao has married second wife and he has issues from the second wife and he was not dependent on the deceased at the relevant time.

3) When the proceeding is filed under the WC Act the Commissioner is first expected to decide the entitlement and then compensation amount which can be awarded in respect of death. When the amount is deposited with the Commissioner, the Commissioner is expected to take decision on the mode of disbursement. Such procedure is laid down in the rules framed under the WC Act. It can be said that in the proceeding No.1/2014 this procedure was followed by exercising power given to the Commissioner. The Commissioner has given direction to divide the amount equally between the mother and father of the deceased.

4) The contention that the father had not taken care of the deceased during childhood of the deceased

hence he cannot claim himself to be the dependent of the deceased cannot be considered in a proceeding like present one. Learned counsel for the appellant placed reliance on a case reported as **AIR 2009 SC 3104 (Sarla Verma v. Delhi Transport Corporation)**. The Apex Court has discussed the method which needs to be used for calculating the loss of dependency when the deceased was bachelor. There cannot be dispute over the proposition made by the Apex Court.

5) The extent of dependency needs to be considered and then the compensation amount needs to be ascertained by the Tribunal under the Motor Vehicles Act. In proceeding filed under Workmen's Compensation Act first compensation needs to be determined and then the disbursement is to be made amongst the dependents. At the time of calculation of compensation amount the point of dependency is not expected to be decided. This Court has no hesitation to hold that only because there is contention that the present respondent had not taken care of the deceased during minority of the deceased it cannot be inferred that the respondent was not depending on the

deceased for livelihood. During old age even such father is entitled to the support from his issues. Thus interference is not possible in the decision given by the Commissioner. In the result, the appeal stands dismissed. Civil Application No.7223 of 2014 stands disposed of.

Sd/-
(T.V. NALAWADE, J.)

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