

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 16304 OF 2015
IN FAST/31165/2015

PALLAVI ARJUN DALAVI AND ANR
VERSUS
HDFC ERGO GENERAL INSURANCE CO. LTD. AND ANR

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Advocate for Applicants : Mr. Aniruddha A. Nimbalkar.
Advocate for Respondent No.1: Mr. S.G. Chapalgaonkar.
Advocate for Respondent No.2 : Mr. R. L. Adhe.

CORAM : A.M. BADAR, J.
DATE : 16th DECEMBER, 2015.

PER COURT:

1] This is an application for withdrawal of the amount of compensation awarded by the learned Commissioner or Employees Compensation and Judge, Labour Court, Ahmednagar, to the applicant on account of death of one Arjun Dalvi.

2] Heard Shri Nimbalkar, Advocate for the applicants and Shri Chapalgaonkar, learned counsel for respondent no. 1.

3] According to Shri Nimbalkar, learned counsel for the applicant, claim under Section 10 of the Employees Compensation Act came to be allowed rightly by the learned Commissioner, by holding that the deceased Arjun was in employment of his father/non applicant No.2/original respondent No.1.

4] As against this, Shri Chapalgaonkar, learned counsel for the non applicant/appellant, submitted that the FIR lodged by Raosaheb Dalvi, cousin of the deceased goes to show that deceased Arjun was jointly residing with his father Pundlik and his father was the owner of the tractor. He submits that there is no sufficient evidence to come to the conclusion that

the deceased was in employment of his own father and that too, as a driver on the tractor.

5] After due trial of the case, the learned Commissioner, came to the conclusion that Employer-Employee relationship between deceased Arjn and original respondent No.1 Pundlik is established. Prima facie, it is seen that Pundlik was aged about 52 years and deceased Arjun was his own son. It is not expected of an old person to drive the tractor which can be used for the purpose of agriculture. As such, prima facie, it is evident that respondent No.1 had employed his son as a driver of the tractor. In such situation, we cannot be insensitive to the ground realities prevalent in the rural areas, where, son works for the father. In this view of the matter, some amount of compensation awarded by the learned Commissioner needs to be disbursed in favour of the applicants/original claimants, who are the widow and minor son of deceased Arjun. Hence, the following order :-

[a] Applicants are permitted to withdraw 50% of the amount of compensation awarded by the learned Commissioner under the Employees Compensation Act, 1923 on furnishing personal undertaking that in the event of allowing the appeal, they shall refund the amount of compensation, within four weeks of such decision. Rest of the amount of 50% compensation, be deposited in Fixed Deposit, in a nationalized bank, for a period of one year, renewable if required.

[b] Civil application is accordingly disposed of.

[A.M. BADAR, J]

grt/-