

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**First Appeal No.167 of 2015**

1. Shri Raghunath Singh s/o Mahabali  
Singh Gaherwar,  
Aged about 65 years,  
Occupation – Nil.
2. Smt. Chandrakala w/o Raghunath  
Singh Gaherwar,  
Aged about 55 years,  
Occupation – Nil.
3. Ku. Puja alias Padma w/o Raghunath  
Singh Gaherwar,  
Aged about 22 years,  
Occupation – Nil.

All R/o Dadakipura, Near Kanya  
School, Katol, Tah. Katol,  
Distt. Nagpur (Pin 441 302).

... Appellants

**Versus**

1. Shri Shakti Singh Shekhavat,  
Aged about – Major,  
Occupation – Business.
2. Shri Mulsingh s/o Hanuman Singh  
Shekhavat,  
Aged about – Major,  
Occupation – Business.

Both R/o Hardas Layout,

Katol-Nagpur Road,  
Katol, Dist. Nagpur.

3. Shri Rajendra s/o Kashinath Patil,  
Aged – Major, R/o Pachari Sawanga,  
Tah. Katol, Distt. Nagpur. ...Respondents

Shri S.A. Kalbande, Advocate for Appellants.

Shri A.R. Fuley, Advocate, for Shri S.V. Sirpurkar, Advocate for  
Respondent Nos.1 and 2.

Shri Rajesh Nagpure, Advocate for Respondent No.3.

Coram : R.K. Deshpande, J.

Dated : 23rd November, 2015

Oral Order :

1. Heard the learned counsels appearing for the parties.
2. The Commissioner under the Employees Compensation Act, has passed an award on 1-11-2014 in ECA C-127/2012. The operative portion of the award is reproduced below :

*“1. The application is allowed.*

*2. Non-applicant no.1 and 2 jointly and severally do pay the compensation amount of Rs.8,47,160/- to applicants along with interest at the rate of 12% p.a. From*

*27/9/2012 till realisation and pay 50% penalty amount of Rs.4,23,580/- to applicants.*

*3. Non-applicant no.1 and 2 do pay the funeral expenses of Rs.5,000/- to applicant no.1.*

*4. Non-applicant no.1 and 2 to bear their own costs and to pay that of the applicants.”*

3. The award is passed against the respondent Nos.1 and 2, who are jointly and severally held liable to pay the amount of compensation of Rs.8,47,160/- along with interest at the rate of 12% per annum from 27-9-2012 till its realization. The award has further directed to pay 50% penalty amount of Rs.4,23,580/-. The funeral expenses of Rs.5,000/- are also directed to be paid.

4. The present appeal has been preferred by the claimants challenging exoneration of the respondent No.3, the Contractor, from the liability to make the payment of compensation. It is urged by the learned counsel appearing for the respondent Nos.1 and 2, the principal employers, that they have filed an application for setting aside the ex parte order, said to have been passed by the Commissioner, and that application is pending for

adjudication. Unless there is an adjudication by the Commissioner on the application for setting aside the ex parte order, impugned in the present appeal, no cause of action arises for the claimants to prefer a first appeal before this Court. The claimants have in their favour the order of compensation, and this appeal is not for the enhancement of the compensation. In such a situation, the claimants are at liberty to execute the award passed by the Commissioner against the respondent Nos.1 and 2, subject, of course, to the outcome of the application for setting aside the ex parte order to be passed by the Commissioner in an application, said to be pending before him. Thus, no substantial question of law arises in this first appeal.

5. In the result, the appeal is dismissed.

JUDGE.

Lanjewar