

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 732 OF 2010
ALONWITH
CIVIL APPLICATION NO. 1944 OF 2010
IN
FIRST APPEAL NO. 732 OF 2010

Smt. Kamalvati R. Chauhan & Ors.

.....Applicants
(Orig. Opponents)

V/S.

1. Smt. Fulmati Chauhan & Ors.

.....Respondents
(Nos.1 & 2 are applicants
Nos.3, 4, 5 and 6 are the
Orig. Opponents)

* * * * *

Mr. G.H. Keluskar, Advocate for the appellants.
None for the respondents.

Coram :- Smt. R.P. SondurBaldota, J.

27th April, 2016.

P.C. :-

1). This appeal is preferred to challenge the order dated 12th March, 2010 passed by the Court of Commissioner for Workmen's Compensation, Mumbai, on the application for distribution of the amount of compensation deposited by the employer.

2). One, Hridaynarayan Chauhan was working as a fitter on board vessel, "M.V. Rajjak". That vessel was lost on 18th February, 2008 in Black Sea. The ship could not be traced. Therefore, the owner of the vessel paid the total compensation of U.S. \$40,000 out of which Rs.4,23,580/- was deposited in the office of the Commissioner, amount of Rs.14,96,420/- was deposited in the joint account of respondent no.1,

the widow of the deceased and appellant no.1, the mother of the deceased. The account was to be operated by the mother. In her application for distribution, respondent no.1 alleged that the appellants not only withdrew the entire amount from the joint account but thereafter tried to burn her on 15th January, 2010. The neighbours saved her and took her to Masina Hospital. Respondent no.1 needed money to pay the hospital bills.

3). The appellants appeared before the Commissioner and filed their written statement in which they claimed that after the incident of loss of ship on 18th February, 2008, disputes had arisen between them and the respondents. Respondent no.1 could not examine herself in the application since she was hospitalised. The appellants examined appellant no.1, the mother in support of their claim. The Commissioner noted that, on the presumption that Hridaynarayan had died, the owner of the vessel had deposited compensation amount of Rs.4,23,580/- in the office of the Commissioner towards the payment to be made to the widow of Hridaynarayan. Out of the amount of Rs.14,96,420/- deposited in the joint account, respondent no.1 was given only Rs.1,00,000/- and respondent no.2, the daughter of Hridaynarayan was given Rs.51,000/-. Applicant no.1 retained the entire balance amount of Rs.13,00,000/- by transferring it from the joint account to her independent account. The Commissioner, further noted that during the cross-examination appellant no.1 had admitted that, she and her daughters had received compensation on the death of her husband who used to work in Mazgaon Dock, Mumbai. She has also been receiving family pension. Then, he considered the fact that the sons of appellant no.1 are major and as such could not be said to be dependent upon Hridaynarayan. Even the minor daughters of appellant no.1, were not

dependent upon Hridaynarayan in view of the family pension received for them alongwith the mother. In the circumstances, the learned Commissioner distributed the amount between respondent no.1, the widow of Hridaynarayan and respondent no.2 , his daughter. Applicant no.1, the mother of Hridaynarayan and her two daughters felt aggrieved by the order and have challenged the same by way of the present appeal.

4). It is unfortunate that, despite taking a sizeable amount of Rs.13,00,000/- from the compensation deposited in the joint account, the appellants are not satisfied. They have also been receiving family pension. But still they desire a share in the paltry amount of Rs.4,23,580/- . If there were to be a proper distribution of the entire amount of compensation deposited by the owner of the vessel, respondents no.1 and 2 would have, together received a much higher amount than the amount to be distributed under the application. Considering these facts of the case, there can be no infirmity in the distribution by the Court of Commissioner. The present appeal is nothing but abuse of process of law. It was filed in the year 2010 and has been pending for admission till date, though it appeared on the board on several dates from the date of its filing. Pendency of the appeal has caused unnecessary delay for the respondents to receive the amount of compensation badly needed by them. Therefore, the appeal is liable to be dismissed with costs. The appeal is dismissed. The appellant shall pay costs quantified at Rs.50,000/- in one set to respondents no.1 and 2.

5). In view of dismissal of the appeal, Civil Application No. 1944 of 2010 does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)