

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO. 4711 OF 2016

IN

FIRST APPEAL NO. 350 OF 2014

**Smt. Varsha Jananrdan Koli (Waghmare) &
Ors.**

**...Applicants/
Appellants**

Versus

**Rohini Chemicals Industries through
Proprietor Shri. Balasaheb @ Yashvantrao
Dadasaheb Bhandigare & Ors.**

...Respondents

Mr. T.S. Ingale, for the Applicants/Appellants.

Mrs. Pavitra Mahesh, for the Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 8th December 2016

ORDER :

1. Not on board. Taken on board on a praecipe as moved on behalf of the Appellants.

2. Heard the learned Counsel for the parties. By this Application, the Applicants/original Appellants have prayed for the

following reliefs :-

(a) The Ld. Commissioner for Workmen's Compensation and Judge Labour Court, Sangli be directed to distribute and permit the Applicants Orig. Claimants to withdraw the amount of compensation of Rs. 2,75,000/- deposited by the Respondent No. 1 Orig. Opponent No. 1 in the Trial Court vide C. No. 127 pursuant to the Judgment and Award dated 13.09.2013 passed in W.C. No. 5/B-2/2012 forthwith without any condition.”

3. The Applicants thus had approached the learned Commissioner for employees compensation by an Application ECA No. 53/I-29/2015 seeking distribution of an amount which was the compensation deposited by the employer Respondent No. 1, in pursuance of an award dated 13th September 2013, whereby the Respondent No. 1 was directed to pay an amount of Rs. 1,20,000/- along with interest at the rate of 12 per cent per annum from the due date till full realization of the compensation amount and further direction to pay Rs. 50,000/- to the Applicants. In pursuance to the said Award, the Respondent No. 1 has deposited the compensation amount of Rs. 2,75,000/- vide Challan No. 127.

4. It is the case of the Applicants that the deceased was admittedly working on the premises of Respondent No. 1 while undertaking the welding work in pursuance of an accident which had happened on the work-site. It is stated that the financial condition of the Applicant is very poor. There is no source of income for the Applicant No. 1 and her family and the very livelihood is affected and therefore, she approached the learned Commissioner for the disbursement of the said amount.

5. The learned Commissioner on 20th October 2015 on the sole ground that the Respondent No. 1 employer had now approached the High Court in an independent Appeal, as also the Applicants-claimants have already filed an Appeal seeking enhancement of the compensation, refused to pass an order and rejected the Application on 20th October 2015.

6. Mr. Ingle, the learned Counsel for the Applicant submits that it was not appropriate for the learned Commissioner to reject the Application and more particularly in view of the specific provisions of Section 30-A of the Employees Compensation Act, 1923. Section 30A which pertains to withholding of the certain payments pending decision of Appeal. This provision categorically provides that the

Commissioner can withhold the amount, if so directed by the High Court and which may be deposited by the employer. In the present case, though the Appeal has been filed by the Respondent No. 1 employer, admittedly, it was not filed in time and an Application is filed for condonation of delay. Delay is yet to be condoned. There are no prohibitory orders which are passed by this Court preventing the Commissioner from considering the Application, which was filed on behalf of the Applicant.

7. I have also perused the impugned judgment and order dated 13th September 2013 passed by the learned Commissioner in W.C. No. 5/B-2/2012 whereby compensation is awarded. It is quite clear that the deceased husband of the Applicant No. 1 and the father of the Applicants No. 2 and 3 was doing welding work at the factory premises of Respondent No. 1 when the blast explosion of a Tank Sulfuric Acid had taken place. The only plea which is being urged by Respondent No. 1 is on the oral deposition of Applicant No. 1 stated that the deceased was undertaking contracts. However, same has been disbelieved by the learned Commissioner. The learned Commissioner taking into consideration oral and documentary evidence that the deceased was workman within the meaning of

Section 2(d)(d) of the Act. In this regard, following observation of the learned Commissioner are relevant paragraphs 30, 31, 36, which read as under:-

“30. It is correct that deceased Janardan was carrying out business of fabrication independently at his own premises. However, the fact cannot be ignored that he used to do work of fabrication i.e. welding etc. in the premises of the opponent factory. The work he was doing in the premises of the opponent No. 1 was as per the direction and supervision of the managerial staff of the opponent No. 1. The status of deceased was different when he was working in the premises of the opponent No.1. He cannot be said to be a businessman when he was doing work under control and supervision of the opponent No. 1. May it be so that he was raising bills of his labour charges and material, he can not be called as a businessman thereby. The issue has been discussed at length in para supra in relation of the law laid down by Hon'ble Apex Court. Therefore, the arguments of learned advocate for the opponent cannot be accepted. Thus it is clear that deceased Jnardan was a workman i.e. an employee of opponent No. 1 within the meaning of Section 2(dd) of the Act.

31. It is not disputed that the accident had taken place when deceased Janardan was doing welding work in the premises of opponent No. 1. He was discharging his duty at the relevant time. Hence, I hold that the accident had taken place during the course of and it was arising out of the employment of the deceased. Accordingly, I answer the issue No. 1 in the affirmative.

36. As to issue No. 5:

From the observations and findings recorded above it is clear that deceased Janardan died in the accident

which was taken place during the course of and arising out of the employment with the opponent. It is not disputed that the applicants are his dependents. Therefore, certainly they are entitled to get suitable compensation as per the provision of the Act. As already observed above the wages of the deceased cannot be calculated in terms of monthly wages and hence formula laid down under Section 4(1)(a) of the Act cannot be applied for calculating the amount of compensation. It is therefore the court has to go by the provision of minimum compensation provided in the alternative under Section 4(1)(a) of the Act. The amount of minimum compensation is Rs. 1,20,000/-. The applicants are therefore entitled to get that much amount of compensation from the opponent. In adopting this procedure I am fortified again by the judgment of Kunjoonjamma Daniel (Cited Supra). In that case also under the similar facts minimum compensation amount was awarded.”

8. In the circumstances and in view of the above observations, interest of justice requires that the Civil Application is required to be allowed. It is accordingly, allowed in terms of prayer clause (a). No costs.

9. Parties to act on an authenticated copy of this order.

[G.S. KULKARNI, J.]