

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

FIRST APPEAL NO.589 OF 2014

(National Insurance Company Ltd. ..vs.. Sarju Parvatao Dhote and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 19-10-2016

Heard Smt. S.P. Deshpande, Advocate for the appellant/Insurance Company. None appears for the respondents.

2. The respondent Nos.2 to 4/claimants (brother and sisters of deceased) filed the application under Section 22 of the Employees' Compensation Act, 1923 seeking compensation of Rs.4,33,820/- on account of death of deceased Babulal. The Labour Commissioner has upheld the claim of claimants by the impugned order.

3. At the time of hearing, submissions are made by the learned Advocate for the appellant and following substantial questions of law are raised :

- i) Whether the application filed by the claimants was maintainable in the absence of father of deceased Babulal who according to the appellant

was necessary party ?

- ii) Whether the Labour Commissioner is right in upholding the claim of the claimants for compensation when the evidence on record shows that the claimants were not residing with deceased Babulal.

4. The findings recorded by the Labour Commissioner that deceased Babulal was an employee and his death occurred during the course of employment, have not been challenged. The quantum of compensation determined by the Labour Commissioner, is not challenged.

5. The substantial questions of law raised by the learned Advocate for the appellant at the time of hearing are without any substance and do not require any consideration. The appellant/Insurance Company has no right to assail the impugned order on the ground that father of deceased Babulal is not impleaded as party to the proceedings. This challenge can be raised only by father of deceased Babulal and the challenge cannot be considered at the behest of the appellant/Insurance Company.

6. The other substantial question of law raised by the learned Advocate for the appellant is concerned, I

find that there is nothing on record on the basis of which it can be said that the appellant/Insurance Company has brought sufficient evidence on record to show that deceased Babulal was not supporting the claimants i.e. his younger brother and younger sisters. The Advocate for the appellant has not been able to point out any perversity in the conclusions of the Labour Commissioner.

The appeal is dismissed. The parties to bear their own costs.

Out of the amount deposited by the appellant/Insurance Company before the Labour Commissioner, 25% amount be given to respondent No.2-Durgaprasad Tirath Markam and 75% amount be kept in fixed deposit in a nationalised bank. The respondent No.3-Ku. Brihaspati d/o Tirath Markam is permitted to file application before the Labour Commissioner seeking permission to withdraw the amount and in case an application is filed, the Labour Commissioner shall consider the matter and if satisfied that the respondent No.3-Ku. Brihaspati d/o Tirath Markam is entitled to withdraw the amount of her share, she may be permitted to withdraw upto 30% of the amount deposited by the appellant.

The balance 45% amount be continued in fixed deposit until the respondent No.4-Ku. Mamata d/o

Tirath Markam is major and the disbursement of this amount in favour of respondent No.4-Ku. Mamata d/o Tirath Markam shall be considered after she attains majority.

JUDGE

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