

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 2013 OF 2017

THE UNITED INDIA INSURANCE COMPANY LTD.
VERSUS
SEEMA SADASHIV @ BALU GIRI AND OTHERS

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Advocate for Appellant : Mr Mundada Vinodkumar R.
Advocate for Respondents : Mr Agrawal Pavankumar S.
For R/1 And 2, Mr S V Jadhav h/f Thmobre S. S. For
R/3

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CORAM : V.K. JADHAV, J.
Dated: August 03, 2017

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PER COURT :-

1. Being aggrieved by the judgment and award passed by the Ex-officio Commissioner for Employee's Compensation and Civil Judge (Sr.Division) Parbhani dated 20.8.2015 in WCA No.7/2013, original respondent No.2-Insurer has preferred this appeal to the extent of quantum of compensation as awarded by the Commissioner.

2. Learned counsel for the appellant-insurer submits that, except bare words of respondents-original claimants, there is no documentary evidence lead by the

respondents-claimants to prove the wages of deceased Sadashiv. Though, respondent no.1/employer has admitted in his written statement that deceased Sadashiv was working with him as a driver on tractor on monthly salary of Rs.8,000/-, respondent no.1 has not examined himself to substantiate the same. Learned Commissioner has simply believed the pleadings of respondent no.1 and accordingly calculated the compensation by assuming the salary of deceased Sadashiv at Rs.8,000/- p.m. Learned counsel submits that, deceased Sadashiv was working as a driver on tractor in rural area and it is very unlikely that employer was paying him Rs.8,000/- p.m. for driving a tractor. The learned counsel submits that, the Commissioner has thus awarded the exorbitant amount of compensation.

3. Learned counsel for respondents-original claimants submits that deceased Sadashiv was 28 years of age at the time of his accidental death. Respondent No.1 employer has admitted the employer-employee

relationship, and also salary of Rs.8,000/- being paid to deceased Sadashiv. Learned counsel submits that it is needless to say that if respondent admits the contents of the claim petition, then the claimant need not prove the admitted facts. Learned counsel submits that, the Commissioner has, thus, awarded the compensation in terms of the provisions of Section 4 Schedule IV of the Act. No interference is required. There is no substance in the appeal. Learned counsel submits that, the petitioners and original respondent no.3 are the legal representatives/dependents of deceased Sadashiv. Though, the Commissioner has discussed in paragraph no.18 of the Judgment that petitioners and respondent no.3 shall take $1/3^{\text{rd}}$ share each in the amount of compensation and penalty, in clause No.4 of the operative part of the order, however, directed that petitioners and respondent No.3 shall take equal share in the amount of compensation. Same is thus required to be corrected.

4. I have also heard the learned counsel appearing

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for respondent owner.

5. On perusal of the pleadings, evidence and judgment and award passed by the Ex-officio Commissioner for Employee's Compensation and Civil Judge (Sr.Division) Parbhani, it appears that, the respondents-original claimants have approached the Ex-officio Commissioner for Employee's Compensation and Civil Judge (Sr.Division) Parbhani with a specific pleadings that deceased Sadashiv was in service of respondent no.1 as a driver on his tractor bearing registration No.MH-22/X-790 since one year before the accident on monthly salary of Rs.8,000/-. Respondent No.1 owner has filed his written statement at exh.29. He has admitted employer-employee relationship between him and deceased Sadashiv. He has also admitted the accident and also payment of salary of Rs.8,000/- p.m. to the deceased Sadashiv. Respondent No.1 owner has also admitted that deceased Sadashiv was working with him as a driver on the said tractor owned by him and died in the accident occurred on

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5.6.2012. It has been contended that said tractor involved in the accident is insured with the appellant-insurer and, as such, the appellant-insurer is liable to pay the compensation. On perusal of the written statement filed by the appellant-insurer, it appears that the appellant-insurer has not raised a specific plea that in collusion with respondent no.1 owner of the tractor, respondents-claimants have filed the claim petition to recover the amount of compensation from the appellant-insurer. It is needless to say that, if the employer has admitted the employer-employee relationship and further salary being paid to the deceased employee, the claimants need not prove the same. Though respondent owner has not examined himself, in absence of any plea of collusion between the claimant and respondent-owner, I do not find any substance in the submissions made on behalf of the appellant-insurer that Commissioner has believed bare words of the respondents-claimants and determined the compensation. The learned Commissioner has rightly appreciated the evidence on record and accordingly

awarded fixed compensation in terms of the provisions of the Act of 1923.

6. On perusal of the clause no.4 of the operative part of the order, it appears that, the Ex-officio Commissioner for Employee's Compensation and Civil Judge (Sr.Division) Parbhani has directed that the petitioners and respondent no.3 shall take equal share in the above amount. Learned Commissioner in paragraph No.18 of the judgment has observed that, petitioners and respondent no.3 shall take $1/3^{\text{rd}}$ share each in the amount of compensation and penalty. I do not think that clause no.4 of the operative part of the order is contrary to the directions given by the Commissioner in paragraph no.18 of the Judgment. There are two petitioners and as such, the Commissioner has directed that petitioners and respondent no.3 shall take equal share in the above amount. It does mean that petitioners and respondent no.3 are entitled for $1/3^{\text{rd}}$ share each in the amount of compensation.

7. In view of the above discussion, I do not find any substance in the appeal. The appeal is thus liable to be dismissed. Hence, following order.

O R D E R

1. Appeal is hereby dismissed with costs.
2. Appeal is accordingly disposed of.
3. If any amount is deposited before the Ex-officio Commissioner for Employee's Compensation and Civil Judge (Sr.Division) Parbhani by the appellant-insurer, the respondents-original claimants and respondent No.3-Sumanbai w/o Vithal Giri are permitted to withdraw the compensation as per the apportionment of the compensation made by the Ex-officio Commissioner for Employee's Compensation and Civil Judge (Sr.Division) Parbhani.
4. Pending civil application, if any, also stand disposed of.

(V.K. JADHAV, J.)