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

**FIRST APPEAL NO. 227 OF 2017
WITH
CIVIL APPLICATION (F) NO.2173 OF 2016**

The New India Assurance Co. Ltd.,
Branch Manager, Malkapur, Through
the Divisional Manager,
Dr. Ambedkar Bhavan, 4th Floor,
MECL Building, Seminary Hills,
MAGPUR

..APPELLANT

VERSUS

1. Smt. Ushabai Bharat Jadhav
Aged 29 years, Occ: Nil,
2. Ku. Aarati Bharat Jadhav,
Aged 10 years, Occ: Student,
3. Mr. Rohan Bharat Jadhav,
Aged 8 years, Occ: Student,
4. Smt. Anusayabai Totaram Jadhav,
Aged Major, Occ: Nil,

Nos.1 to 4 R/o. Kinhola,
Tahsil Chikhali, Dist. Buldana,
Nos 2 and 3 minors, through
guardian mother respondent
no.1

5. M/s H.N.B. Engineers Pvt. Ltd.,
"HENABH CENTER', 1326
Shukrawar Peth, Pune-411002 ..RESPONDENTS

Mr P.S. Sahare, Advocate for appellant;
Mr P.N. Verma, Advocate for respondent Nos.1 to 3;
Mr P.S. Gavai, Advocate h/f Mr. Piyush Girdekar,
Advocate for respondent No. 5

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CORAM : N.W. SAMBRE, J.**DATE : 17th APRIL, 2017****ORAL ORDER :**

This is an appeal filed by the Insurance Company under Section 30 of the Workmen's Compensation Act.

2. Mr. Sahare, learned Counsel for the appellant-insurance company took me through the entire judgment delivered by the Commissioner under Workmen's Compensation Act so as to urge following question of law.

Whether there was breach of insurance policy or whether claim in question could be covered within terms of insurance policy?

3. The facts as are necessary for deciding the present appeal are as under :

One Bharat, who was working with respondent No.5 died at the age of 35 years while

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working in sewage treatment plant while performing his official job on 26th January, 2012. It is claimed that he was drawing wages of Rs.8000/- per month and was having permanent nature of employment.

4. The said claim was resisted by present appellant vide Exhibit-CB-15 written statement on the ground that risk of death of deceased was not covered under the insurance policy as job of maintenance which was given to Bharat was not within ambit of insurance policy in question.

5. Heard respective sides. So as to establish the claim of the claimants, in addition to oral evidence of claimant, they have relied upon report at Exhibit-U-21, inquest panchnama at Exhibit-U-22, advance certificate of cause of death at Exhibit-U-23, spot panchnama at Exhibit-U-24, insurance policy at Exhibit-U-25, school leaving certificate of deceased Bharat at Exhibit-U-26. Salary certificate is produced by employer at Exhibit-CA-34 and letter for settlement of claim at

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Exhibits-CA-33 and 54.

6. The claim was repudiated by present appellant based on the insurance policy at Exhibit-CB-61, which was for a period from 3rd July, 2011 to 2nd July, 2012.

7. It is then to be noted that the death of Bharat during the employment with the employer is not an issue under dispute.

8. Bharat died while working in sewage treatment plant.

9. It is then to be noted that there are other workers like deceased Bharat, who died in the same accident, whose claims were settled by the insurance company at Exhibit-CA-54 i.e. One Pandurang Shekorao Munde.

10. Once said claim was settled by the insurance company, in my opinion, there appears to be plea of acquiescence against the appellant and

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act on the part of insurance company of repudiating the claim cannot be sustainable, particularly in the backdrop of object of welfare legislature.

11. Apart from above, the Commissioner under Workmen's Compensation Act, has read down the term of policy, which according to him, covers with allied workers who were working on maintenance of sewage treatment plant.

12. In view of law laid down by the Apex Court in the matter of **Golla Rajanna etc. vs. Divisional Manager and another** reported in **2007(1) C.L.R. 1**, in my opinion, no question of law could be noticed in the present appeal. The appeal, as such fails stand dismissed.

13. In view of dismissal of present appeal, claimants will be at liberty to to apply for withdrawal of the amount deposited before the Commissioner under Workmen's Compensation Act, who shall decide the same on its own merits.

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14. In the light of dismissal of the first appeal, civil application for stay stands disposed of.

(N.W. SAMBRE, J.)

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