IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 287 OF 2001

New India Assurance Company Ltd.
Having its registered and head office
at New India Assurance Building
87, M.G. Marg, Fort, Mumbai 400 001
and also having Divisional Office at
Latur. ...Appellant
(Orig.review
Petitioner)

Versus

1. Kalinda w/o Vikram Gaikwad,
age 20 years, Occu : Household
R/o: Chapoli, Taluka Chakur,
District Latur.

2. Suvarna D/o Vikram Gaikwad,
age 4 years, Occu : Minor

3. Seetabai d/o Vikram Gaikwad,
age Minor,
Respondent No. 2 and 3 are minors
Under the guardianship of the
Respondent No.1, R/o: Chapoli,
Tq. Chakur, ist. Latur.

4. Ismail Mohd. Shaikh,
age major
R/o: Modi Compound, R/14,
Ghalapdeo Road, Bykhulla,
Mumbai-10

5. The Tahasildar, Taluka Latur,
District Latur. ... Respondents
(Orig.Resp.in Review
Petition)

Advocate for Appellant : Shri. Mohit R. Deshmukh
Advocate for Respondent Nos. 1 to 3 : Shri. B.R. Kedar
AGP for Respondent No. 5 : Shri. S.P. Deshmukh

CORAM : A.M. DHAVALE, J.

DATE: 31st JULY, 2018

ORAL JUDGMENT :

1. Heard.

2. Admitted. With the consent of the parties, First Appeal is taken up for final hearing.

3. In WCA No. 79 of 1996, the Commissioner for Workmen's Compensation, Latur by Judgment dated 27.07.1998 held that the respondent Nos. 1 to 3 as legal heirs of Vikram Gaikwad are entitled for compensation amount of Rs. 2,16,910/- on account of his accidental death during the employment. The present appellant-insurance company was directed to deposit the said compensation within a month. It further directions that in case of breach, it will carry interest @ 12 % per annum. There is further order against respondent No.1 with which we are not concerned.

4. Aggrieved by this judgment, present appellant filed

review petition No. C.A. No. 9 of 1998 which came to be dismissed on 31.03.2000. The appellant preferred writ petition challenging the said order on the ground that there was no insurance of the vehicle. By order dated 31st July, 2001, writ petition No. 1982 of 2000 was directed to be converted into First Appeal subject to payment of necessary court fee in compliance of law contained in Workmen's Compensation Act 1923 in relation to the appeal, within a period of four weeks from that day. Admittedly, this order was not complied. Still the appeal remained pending. Recently, Civil Application No. 3020 of 2018 was filed for stay. My learned brother Judge passed the following order :-

> 2. Amount of award along with accrued interest which has not been deposited pursuant to earlier order passed by this court, the same shall be deposited with incidental accruals in this court in right earnest, in any case, within a period of five weeks from today.

The said order was complied recently.

5 At this stage, learned Advocate Shri.Kedar for respondent Nos. 1 to 3 challenges the maintainability of the appeal on the ground of non-compliance of proviso 3 to section 30. Section 30 relates to the appeal and the proviso is as under :-

> Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order apppealed against.

6. It is submitted that insurance company which indemnifies the employer stands in the shoes of the employer. Mr.Kedar submitted that in the case of *United India Insurance Company Vs. Munna Pasha and others 2016 (2) AIR Bom. R 281,* this court has decided that this provision is mandatory and the court has no power to direct registration of appeal or direct the office to accept the appeal when the amount mentioned in this proviso is not deposited. He therefore submitted that appeal itself is not maintainable as not only the writ petition was filed without any compliance regarding depositing the amount, but when it was directed to be converted into first appeal, the order passed by this court in 2001 is not complied till 2018.

7. Per contra, learned advocate Shri. Deshmukh relies on para 27. Following is the sentence of para 27.

> However, the manner of deposit of such amount can be regulated by the court and the court can direct to deposit such amount in the court or with the Commissioner first.

8. The facts in the judgment referred above are very much similar. The appeal was filed by the insurance company claiming that there was no insurance. The very same question about the maintainability of the appeal without compliance of the proviso regarding accompanying the appeal memo with the certificate by the Commissioner that the appellant has deposited the amount payable under order appeal against, was in question. Only difference was in that case, claim of insurance was that there was no liability on account of breach of policy. In this context, while interpreting this proviso, it has been held that "it is the job of the office and not of the court to see and confirm that the amount is already deposited only after that appeal memo can be accepted by the office otherwise, the office can refuse to accept the appeal. Thus, there is difference between the two proviso, and it cannot be said i.e. up to the court to decide this point. In view of the 3rd proviso, it is mandatory. The court has no power to direct appellant to accept appeal when the amount mentioned in this proviso is not deposited. However, the manner of deposit of such amount can be regulated by the court, the court can direct

to deposit such amount in the court or with the Commissioner first. Thus, from all angles, the preposition is not accepted that appeal considered by the court if it is filed by insurance company without certificate of deposit and the present applicable to the insurance company”.

9. Learned advocate Shri. Deshmukh for the appellant submitted that manner of deposit of such amount can be regulated by the court and by order dated 01.03.2018, It has been so regulated and the said order has been complied.

10. On reading the Judgment in whole, it has been clearly laid down that provisions of proviso to section 30 regarding accompanying the certificate of Commissioner about the deposit of the amount order is mandatory. It is held that the court has no power to direct the office to accept the appeal when the amount mentioned in the proviso is not deposited. While observing so, it has been held that the court can regulate the manner of such deposit, and court can direct to deposit such amount in the court. This sentence in the context means that instead of depositing the amount in the Commissioner Office and obtaining the certificate of

Commissioner, there shall be proper compliance of the proviso if as per the order of the court, the amount due and payable is deposited in this court. It indicates only power to change the manner of deposit and does not indicate that the court can extend the time to deposit the amount.

11. In the present case the matter was filed as writ petition against the petitioner. Hence, there was no question about depositing the amount at the time of filing. In 2001, there was direction to convert the writ petition into First Appeal subject to compliance of the terms and conditions of filing appeal within four weeks. There would have been different question if the said order would have been complied within four weeks as ordered by this court, but the said order has not been complied for 17 years and now, the amount has been deposited along with up to date interest. This is not compliance of the condition for filing appeal as per proviso 3.

12. Apart from the fact that the said provision has been held mandatory, even if it is held to be discretionary, I find that delay of 17 years in compliance is not at all reasonable and cannot be held that the said discretion should be

exercised to hold that the appeal has been duly entertained.

13. The issue whether insurance company was liable or not was decided by the Commissioner and again opportunity was given to him in review. The Commissioner dismissed the writ when there was specific provision for filing appeal, it should have been exercised in accordance with the provisions of section 30.

14. Considering all these facts, I hold that this appeal is not maintainable and the objection raised by the respondent deserves to be upheld. Hence, the appeal is dismissed as not maintainable.

15. The amount deposited be paid to the respondent Nos. 1 to 3.

(**A.M.DHAVALE, J**)

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