

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

FIRST APPEAL NO.889/2018

The New India Assurance Company Limited, thr. its Regional
Manager, Regional Office, Nagpur

..VS..

Smt. Anita wd/o Ravindra Puri and ors

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

Court's or Judge's Order

Shri M.B. Joshi, Counsel for the Appellant.

CORAM : V.M. DESHPANDE, J.

DATED : OCTOBER 30, 2018.

1. Heard learned counsel Shri M.B. Joshi for the appellant.

2. The present appeal is **ADMITTED** on following substantial question of law:

Whether learned Commissioner under Employees' Compensation Act, 1923 and Judge 3rd Labour Court, Nagpur is empowered to direct the Insurance Company to pay amount to the claimants and then recover it from the employer?

3. The record and proceedings be called for.

Civil Application No.1592/2017

1. This is an application for grant of Stay.

2. An application under the Employees'

Compensation Act, 1923 was moved by widow Smt. Anita, son Toshit, and daughter Ku. Janvi of deceased Ravindra. The age of Toshit was 9 years old and age of Ku. Janvi was 11 years old.

3. Admittedly, the deceased was working as a driver with non-applicant No.4 in the present application and Truck having multi-axle bearing registration No.CG-04/DA-5213 was duly insured with the applicant-insurance company. In an unfortunate vehicular accident, Ravindra lost his life. It was open for the claimants either to file a claim petition under Section 166 of the Motor Vehicles Act, 1988 or under Section 22 of the Employees' Compensation Act, 1923 as provided under the provisions of the Motor Vehicles, 1988. It appears that the claimants availed remedy to file an application under the Employees' Compensation Act, 1923.

4. The said application was contested by applicant-insurance company and the truck owner of the offending vehicle. However, after a full dressed Trial, the application filed on behalf of the claimants was partly allowed and the compensation Rs.7,52,600/- was directed to be paid by applicant-insurance company and the owner of the offending vehicle jointly and severally . Even, individually the insurance was held responsible to pay the amount.

5. The applicant-insurance company preferred the present appeal before this Court.

6. It is submission of learned counsel Shri M.B. Joshi for the applicant-insurance company that entire amount along with interest is deposited before the Court below. The applicant-insurance company wants that the claimants be restrained from withdrawing the said amount.

7. After hearing learned counsel Shri M.B. Joshi for applicant-insurance company, this Court is not granting the prayer for a simple reason that the Award says that even individually applicant-insurance company is liable to pay entire compensation.

8. In that view of the matter, the present application is rejected.

9. Further, it is made clear that merely pendency of the appeal before this Court shall not be treated as Stay for withdrawal and if the application for withdrawal of the amount is moved by the claimants, learned Judge below shall allow the said application and permit the claimants to withdraw the entire amount.

10. With this, the civil application stands disposed of accordingly.

JUDGE

!! BRW !!

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