

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

CIVIL APPLICATION (CAF) NO. 2869 OF 2017

WITH

FIRST APPEAL ST. NO. 12314 OF 2017

(NEW INDIA ASSURANCE CO. LTD....VS.. SUNITA MUNNA WAGHADE & OTH.)

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

Court's or Judge's orders

Shri S.D.Zoting, Adv. a/w. Ms.Nisha Khope,Adv. for Appellant.
 Shri P.P.Kotwal, Advocate for respondent No.5.

CORAM : Z.A.HAQ, J.

DATED : AUGUST 27, 2018.

CIVIL APPLN.NO.2869/2017.

For the reasons stated in the application, the
 delay of 55 days in filing the appeal is condoned.

The application is **disposed** accordingly.

FIRST APPEAL ST.NO.12314/2017.

This is an appeal under Section 30 of the Employees Compensation Act, 1923. The appeal against respondent Nos. 1 to 4 (claimants) is dismissed as per the order passed by the learned Registrar (Judicial) on 5th June, 2018. Even after lapse of more than 14½ months, the appellant-Insurance Company has not taken steps to file any application for restoration of the appeal dismissed against the respondent Nos. 1 to 4.

When the matter was called out, the learned
 advocate appearing for the appellant requested for time to file

such application, however, I felt it appropriate to examine the merits of the matter before considering the request made on behalf of the appellant for grant of time.

The appellant has not formulated any substantial question of law in the memo of appeal. At the time of hearing, the learned advocate appearing for the appellant has submitted that following substantial questions of law arise for consideration:

- i) That the learned Commissioner has committed an error by upholding the claim of the claimants for compensation, overlooking the fact that the evidence on record is not sufficient to establish that Munna Waghade was an employee of the respondent No.5 at the relevant time?
- ii) The learned Commissioner has committed an error in recording that Munna Waghade was earning Rs.8,000/- per month and consequently the amount of compensation calculated by the learned Commissioner is on the higher side?

After going through the impugned award, I find that the claimants have brought on record sufficient evidence on the basis of which the learned Commissioner has rightly recorded that death of Munna Waghade occurred because of injuries sustained by him in the accident in which Truck No. MH-31/9674 was involved. The claimants have brought sufficient evidence on record to show that Munna Waghade was working on the truck as cleaner at the time of the accident. It is not in dispute that the truck in question was

insured with the appellant Insurance Company at the relevant time. It cannot be said that the learned Commissioner has committed any error in recording that Munna Waghade was on the truck owned by the respondent No.5 and was in employment of the respondent No.5 at the time of accident.

Other submission made on behalf of the appellant/Insurance Company about income of Munna Waghade needs to be rejected. Munna Waghade was aged about 40 years at the time of accident and was working as Cleaner and maintaining his wife and three children.

In my view, the impugned order does not require any interference by this Court, particularly as the appellant / Insurance Company has not been able to point out any substantial question of law which is required to be considered in this appeal.

The appeal is **dismissed** with costs quantified at Rs. Twenty Thousand to be paid by the appellant Insurance-Company to the respondent Nos. 1 to 4.

The appellant/ Insurance Company shall produce on record of this appeal the receipt showing payment of amount of costs, within one month.

The amount lying in deposit either before this Court or before the learned Commissioner shall be disbursed as per the award passed by the learned Commissioner.

CIVIL APPLN.NO. 2870/2017.

In view of disposal of the appeal, the application praying for grant of stay does not survive, hence, it is **disposed.**

JUDGE*RRaut..*