

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

FIRST APPEAL NO.192/2015

Parmanand S/o Laghuttam Kanhekar

..Vs..

Sau. Purnima Wd/o Manoj Ilamkar and others

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

Court's or Judge's orders

Shri I.S. Charlewar, Advocate for the appellant.
Shri O.W. Gupta, Advocate for Respondent No.1.
Shri A.R. Kaplay, Advocate h/f Shri A.M. Quazi, Advocate for respondent
No.4.
Shri A.R. Wagh, Advocate h/f Shri R.A. Gupte, Advocate for respondent
Nos.5 and 6.
Shri P.S. Khubalkar, Advocate for respondent No.7.

CORAM : Z.A. HAQ, J.

DATE : 17.4.2018.

CIVIL APPLICATION NO.761/2015

The appellant has filed Civil Application No.761/2015 seeking permission to waive the mandatory condition of depositing the balance amount as per impugned award.

Heard.

As per the third proviso below Sub-section (1) of Section 30 of the Employee's Compensation Act 1923, alongwith the memorandum of appeal, the appellant was required to file a certificate issued by the Commissioner showing that the amount of compensation is deposited by him. It is well settled that third proviso below Sub-section (1) of Section 30 of the Act of 1923 is mandatory.

In view of the above, this civil application cannot be entertained and needs to be dismissed. It is

dismissed accordingly. No costs.

FIRST APPEAL NO.192/2015

The appellant (owner of agricultural land where the accident took place) has filed this appeal to challenge the award passed under the Employee's Compensation Act, 1923 (for short "Act of 1923"). As per the award, the appellant and respondent No.7 - Hemraj S/o Yashwant Kuttarmare (alleged to be employee of appellant and respondent No.7 at the relevant time) are jointly and severally liable to deposit Rs.4,58,663/- towards compensation payable to the claimants. In addition, the appellant and respondent No.7 are liable to pay 12% simple interest on the amount of compensation, and penalty to the tune of 50% of the amount of compensation.

Alongwith memorandum of appeal, the appellant filed certificate showing that an amount of Rs.1,00,000/- was deposited by him before Commissioner, Employee's Compensation Act. As per the third proviso below Sub-section (1) of Section 30 of the Act of 1923 the appellant was required to file a certificate issued by the Commissioner showing that amount of compensation is deposited by him. It is well settled that the third proviso below Sub-section (1) of Section 30 of the Act of 1923 is mandatory.

Learned Advocate for the appellant has submitted that as the liability to pay the amount of compensation is saddled on the appellant and

respondent No.7, the appellant is liable to deposit Rs.2,30,000/- i.e. 50% of the amount of compensation. The submission made on behalf of the appellant is misconceived and cannot be accepted.

Till date the appellant has not deposited the principal amount of compensation determined by the learned Commissioner. In my view, as the appellant has failed to comply with the mandatory requirement of third proviso below Sub-section (1) of Section 30 of the Act of 1923, the appeal filed by the appellant to challenge the award insofar as grant of compensation is concerned, is not maintainable.

As the appellant has also challenged the award imposing interest and penalty, appeal to that extent is maintainable, however, learned Advocate for the appellant states that the appellant would prefer to file fresh appeal after complying with the mandate of third proviso below Sub-section (1) of Section 30 of the Act of 1923. Liberty is sought to file fresh appeal.

Considering the facts of the case, following order is passed:

(i) Appeal filed by the appellant to challenge the award passed by the learned Commissioner granting compensation of Rs.4,58,000/- is dismissed as it cannot be entertained for failure to comply with the requirement of third proviso below Sub-section (1) of Section 30 of the Act of 1923.

(ii) Appeal filed by the appellant challenging Clause (03) of the impugned award i.e. imposition of

interest and penalty on the amount of compensation is disposed as withdrawn with liberty to challenge this part of the award by filing fresh appeal, if so advised.

(iii) The amount deposited by the appellant shall be disbursed by the learned Commissioner after 8 weeks from today.

CIVIL APPLICATION NO.762/2015

In view of disposal of appeal, this application praying for stay does not survive and is **disposed** accordingly. No costs.

JUDGE

Tambaskar.