

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

FIRST APPEAL NO.1089/2018

M/s. Aakash Jewellers, Keshar-Kunj Complex, thr. its Proprietor Gagan s/o
Kailashchandra Chhitarka, Gondia

..VS..

Smt. Kesharbai wd/o Ashokkumar Gahgaye and ors

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

Court's or Judge's Order

.....
Shri A.N. Vastani, Counsel for the appellant.

CORAM : V.M. DESHPANDE, J.

DATED : OCTOBER 22, 2018.

1. Heard learned counsel Shri A.N. Vastani for the appellant.
2. Issue Notices to the respondents, returnable after 8 weeks.

Civil Application No.3155/2018

1. This is an application for grant of Stay.
2. Learned counsel Shri A.N. Vastani for the appellant submits that the appellant deposited entire amount of compensation, and not the amount of interest and penalty, under Award before learned Commissioner under Employees' Compensation Act, Fourth Labour Court, Nagpur.
3. Undisputed facts coming on record are that there took place dacoity in shop owned by the appellant and while resisting the dacoity, Ashokkumar, husband, father

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and son of the respondents lost his life. Thus, during the course of employment, he lost his life.

4. Learned counsel Shri A.N. Vastani for the appellant submits that learned Commissioner ought not to have considered claim by considering minimum wages since according to him in the application filed before learned Commissioner salary shown by the claimant was Rs.1500/- only. Learned counsel Shri A.N. Vastani for the appellant submits that the said was required to accept Rs.1500/- not under the minimum wages in Gondia town.

5. Perusal of the application filed by the respondents shows that it was specifically stated in paragraph No.1 of their application that the appellant comes under the scheduled employment as “Shops and Commercial Establishment” for which the Government of Maharashtra has fixed the minimum wages as per the Minimum Wages Act. However, the same were not paid by the appellant to the deceased. The appellant in its written statement has not denied the said fact. Therefore, at this stage, it is not permissible for the appellant to state that the Court below committed any mistake in granting the same.

6. In that view of the matter, it is always open for the Court to mould relief especially when the person lost his life during the course of the employment while resisting dacoity. Therefore, the application for grant of Stay is rejected.

7. It shall be open for the respondents to withdraw the amount deposited before learned Commissioner

immediately.

8. The appellant is hereby directed to deposit interest and penalty within a period of 2 weeks from today especially when the appellant is Jeweller and, therefore, no sympathy can be shown especially the employee lost his life while resisting dacoity. It is made clear that the Court below should not treat the pendency of the application as Stay before this Court.

9. The civil application stands rejected and disposed of accordingly.

JUDGE

!! BRW !!

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