

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**40 CIVIL APPLICATION NO.13896 OF 2019
IN FA/1417/2019 WITH CA/5559/2019 IN FA/1417/2019**

CHANDRAKALA SUNIL BANSODE AND ORS
VERSUS
CHAIRMAN SHREE CHATTRAPATI SHAHU SAHAKARI SAKHAR KARKHANA
LTD., KAGAL AND ORS

...
Advocate for Applicants : Mr. Choudhari Sushant B.
Advocate for Respondent : Mr. Ashwin V. Hon

...
CORAM : MANGESH S. PATIL, J.

DATE : 17.12.2019

PER COURT :

Heard both the sides.

2. This is an application by the original claimants in a claim under the Employees Compensation Act seeking withdrawal of the amount deposited by the Sugar Factory which has preferred the Appeal.

3. The learned advocate for the appellant Sugar Factory strongly opposes the application. He submits that there is a genuine dispute as regards to the fact as to whether the deceased can be said to have died during the course of the employment. He has died in a road accident when the motorcycle he was riding slipped. There was no evidence to show that at that moment he was travelling in discharge of the employment. Therefore, the claimants may not be allowed to withdraw anything, more so, being labourers they would not be able to refund anything if the appeal is ultimately allowed. At least a bank guarantee be insisted.

4. The learned advocate for the claimant points out that the Commissioner has given cogent and sufficient reasons for concluding, firstly, that Sugar Factory being the principal was liable to compensate the claimants and secondly, that the deceased had died during the course of the employment. The reasons quoted in the application have not been refuted by leading any counter evidence. Besides even the appeal now stands dismissed as against the respondent no.6 who is the Labour Contractor, by order dated 05.07.2019.

5. The learned advocate for the appellant sugar factory submits that he would be filing application seeking restoration of the appeal to the extent of respondent no. 6.

6. Having considered the reasons assigned by the Commissioner, and the fact that the First Appeal as of now stands dismissed in its entirety as it has already been dismissed against the respondent no. 6 who is the necessary party, it would be just and proper to allow the claimants to withdraw 50% of the amount of compensation with usual terms.

7. The application is allowed. The applicants/claimants are allowed to withdraw 50% of the amount deposited in the office of the Commissioner, by furnishing an undertaking in usual terms as well as furnishing a solvent surety in the like amount.

(MANGESH S. PATIL, J.)