

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 11222 OF 2019

Cholamandalam General
Insurance Co. Ltd.

Petitioner

Versus

Sau Vimalbai Subhash Salve
& others

Respondents

Mr. A.G. Choudhari, advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 11th September, 2019

PER COURT:

1. The petitioner is the original respondent no. 2 in the proceedings before the Workmen's compensation Commissioner in Application (WC) No. 2/2017. By way of a compromise before the Mediator in the mediation proceedings, the petitioner-insurance company agreed to pay an amount of Rs. 5,71,945/- as compensation to the applicants for the loss of life on account of the death of Santosh Subhash Salve. The applicants are the parents of the deceased.

2. The grievance of the petitioner is that the deceased was working as a *hamal* with a truck which was transporting cement bags. On the date of the accident, the truck was in a parked condition and the deceased was unloading the cement bags when

the MSRTC bus dashed the truck causing grave injuries to the deceased, who thereafter has died. The MSRTC is said to have paid an amount of Rs.10,000/- as advance and subsequently, Rs. 2,90,000/- as ex-gratia payment to the claimants.

3. The original claim of the claimants was for an amount of Rs. 8,50,000/-, keeping in view that the deceased was earning Rs. 8,000/- per month and there has been a 100% loss of earning capacity on account of the death of Santosh.

4. This petition cannot be entertained for two reasons. Firstly, that the compromise between the parties before the Mediator resulting in the award dated 21.02.2018, signed by the Commissioner, Workmen's Compensation, Nandurbar, would have the character of a judgment of the Commissioner under the Workmen's Compensation Act. Only a First Appeal under Section 30 of the Act is maintainable and that too, after depositing the entire amount as is granted by the labour Court, before the same Court, and by producing a receipt. Secondly, the Workmen's Compensation Act (presently Employee's Compensation Act, 1923) prohibits under section 8, any payment made out of Court in the case of death and such a payment made is to be ignored.

Consequently, the payment of Rs. 3,00,000/- made by the MSRTC, outside the Court will have to be ignored. So also, MSRTC is not the employer of the deceased and the said payment was purely an ex-gratia payment.

5. In view of the above, this petition, being devoid of merits, is dismissed.

6. Needless to state, if the petitioner desires to prefer a First Appeal, as is provided under Section 30 of the Employee's Compensation Act, 1923, the dismissal of this petition would not come in way, if there is no other legal impediment. However, the ground of ex-gratia payment made by the MSRTC, shall not be available.

RAVINDRA V. GHUGE
JUDGE

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