

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

FIRST APPEAL NO. 4392 OF 2017

WITH

CIVIL APPLICATION NO.12168 OF 2019 IN FA/4392/2017

WITH

CIVIL APPLICATION NO. 14818 OF 2016 IN FA/4392/2017

WITH

CIVIL APPLICATION NO. 13468 OF 2017 IN FA/4392/2017

1. The Executive Director,
Mahendra Business and Consulting
Services Pvt. Ltd., Head Office-570
B.B. Sadan House, Mahendra Towers,
Warli Mumbai.
2. The Manager,
Mahendra Insurance,
Mahendra Business and Consulting
Services Pvt. Ltd., Behind I.C.I.C.I. Bank,
Central Building, Osmanabad,
Tq & Dist. Osmanabad. ... **Appellants.**

VERSUS

1. Vijay Pandurang Dantkale,
Age 66 years, Occ. Tailor,
R/o. Sachyog Nagar, Nanded.
2. Shantabai Vijay Dantkale,
Age 60 years, Occ. Household,
R/o. Sachyog Nagar, Nanded. ... **Respondents.**

...

Advocate for the Appellants : Mr. Gangakhedkar Shailendra S.

Advocate for the Respondents : Mrs. Chincholkar Surekha G.

CORAM : MANGESH S. PATIL, J.

DATE : 05/11/2019

ORAL JUDGMENT :

Heard.

2. **Admit.**

3. The learned advocate for the respondents waives service. On the request of both the sides the matter is heard finally.

4. The respondents are the original claimants who had filed proceeding under the Workmen's Compensation Act before the Commissioner for death of their son who was serving as a Manager and Field Officer with the Appellant Company. By the impugned judgment and order dated 21.01.2016 the learned Commissioner allowed the claim and directed the appellants to pay to them an amount of Rs. 8,31,921/- together with interest @ 12 % p.a. Being aggrieved, the appellants are before this Court.

5. The learned advocate for the appellants submits that though it was a serious mistake on the part of the appellants in not contesting the proceeding before the Commissioner, it had already deposited a sum of Rs. 3,00,000/- in the account of the respondents which they have also withdrawn. In fact the deceased was serving as a Manager and Field Officer even according to respondents. There is a specific pleading in the application itself. The appellants are therefore highly interested in contesting the proceeding. Some opportunity may be

given subject to some penalty and the matter be remanded for decision afresh by extending such opportunity to the appellants, may be by making the matter time bound.

6. The learned advocate for the respondents submits that in fact the appellants have been aware about the proceeding going on before the Commissioner. Interlocutory order passed by the Commissioner was also challenged by it before this Court. The matter was made time bond by this Court and still the appellants failed to contest the proceeding. If such was the conduct of the appellants before the Commissioner no indulgence be shown to them.

7. The learned advocate for the respondents further submits that the respondent No. 2 is suffering from blood cancer and that is why the respondents are in dire need of money and have filed Civil Application No. 12168/2019 for withdrawal of an amount of Rs. 6,00,000/- out of the amount deposited by the appellants before the Commissioner.

8. It is a matter of record that the appellants have allowed the matter to be decided behind their back in spite of being aware about its pendency and further the fact that the matter was made time bond by this Court and the order was passed by this Court in a proceeding initiated by the appellants themselves being aggrieved and dissatisfied

by the Award of interim compensation granted by the Commissioner.

9. However, simultaneously one cannot lose sight of the fact that even according to the respondents as averred in their application the deceased was serving as a Manager and Field Officer. Therefore there is serious dispute to be decided by the Commissioner if the deceased could be regarded as a Workman. This issue has not at all been addressed by him. Therefore, though a remand at this stage would protract the matter for no fault of the respondents and rather due to serious lapses on the part of the appellants, in my considered view the remand is imperative.

10. In the peculiar facts and circumstances, in my considered view it would be just and proper to quash and set aside the impugned judgment and order and remand the matter for decision afresh by extending an opportunity to the appellants to contest the proceeding, imposing of some costs and further allowing the respondents to withdraw some sum from out of the amount deposited in the Commissionrate which would meet the ends of justice.

11. The appeal is allowed. The impugned judgment and order is quashed and set aside and the matter is remitted back to the Commissioner for decision afresh by extending an opportunity to the appellants to file its written statement and to lead evidence. However,

that shall be subject to the following conditions:

(a) The appellants deposit costs of Rs. 10,000/- in the Office of the Commissioner Cum Labour Court within four weeks from today.

(b) The appellants file their written statement within a week on their appearance before the Commissioner.

12. The respondents shall be entitled to withdraw sum of Rs. 3,00,000/- from out of the amount deposited by the appellants in the Office of the Commissioner cum Labour Court without furnishing any security.

13. The respondents shall also be entitled to withdrawn the amount of costs of Rs. 5000/- deposited in this Court as well as the costs of Rs. 10,000/- to be deposited as per the direction of this order.

14. The parties shall appear before the Commissioner on 04.12.2019 and there shall be no necessity to issue notices.

15. The First Appeal and the Civil Applications are accordingly disposed of.

(MANGESH S. PATIL, J.)

mkd