

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

FIRST APPEAL NO.700 OF 2017

Brijesh Bansilal Lulla and anr.
-vs-
Ruksana Parvin wd/o Syd. Hasan and anr.

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

Court's or Judge's Orders.

Shri N. R. Saboo, Advocate for appellants.
Shri B. N. Mohta, Advocate for respondent No.1.
Shri A. J. Pophaly, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.
DATE : February 15, 2019

Civil Application No.680/2019

By this application it is prayed that the applicants be exempted from depositing the amount of compensation as ordered to be paid by the present applicants under the impugned judgment dated 06/08/2016. It is stated that the said judgment has also been challenged by the insurer in F.A.No.915/2017 and as the amount of compensation has been deposited in that appeal, the deposit of the amount of compensation in this appeal be dispensed with. The application is opposed by the learned counsel for the claimant by relying upon the judgment of the Full Bench in *New India Assurance Co. Ltd. vs. Savita Sen and ors. 2004 ACJ 2014.*

After First Appeal No.915/2017 was admitted the appellants in the present appeal have amended the

appeal memo and have now challenged the entire judgment passed by the learned Commissioner holding them jointly and severally liable to pay compensation.

In the light of the fact that under the third proviso to Section 30(1) of the Employees Compensation Act, 1923, an appeal by an employer has to be accompanied by a certificate issued by the Commissioner indicating deposit of the amount payable under the order appealed against, the said requirement as prescribed cannot be dispensed with. The challenge by the insurer in F.A.No.915/2017 is independent of the challenge raised by the present appellants. Hence it would be necessary for the applicants to deposit an amount of Rs.5,70,720/- in this Court within period of four weeks from today. The Civil Application is disposed of in aforesaid terms.

Civil Application No.400 of 2018

In the light of the order passed on Civil Application No.680/2019 this application is disposed of by observing that on the amount of Rs.5,70,720/- being deposited in this Court, the execution of the impugned award shall remain stayed during pendency of the proceedings. It is open for the claimants to apply for withdrawal of the amount deposited which request would be considered on its own merits.

First Appeal No.700 of 2017

As the appellants have challenged the judgment of the learned Commissioner imposing liability upon them,

the substantial question of law that arises for consideration is :

“ In the light of the decision in Jyothi Ademma vs. Plant Engineer, Nellore and anr. AIR 2006 SC 2830, whether the appellants can be held liable to pay the amount of compensation ? ”

JUDGE