

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

FIRST APPEAL NO. 1560 OF 2019

United India Insurance Company Ltd., through its Manager, Nagpur
VS.

Sakharam s/o Dudharam Narnaware & ors.

Office Notes, Office Memorandum of Coram,
orders
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's

Shri. B. Lahiri, counsel for appellant.
Shri. V. R. Thote, counsel for respondents No.1 & 2.
Shri. V. K. Belekar, counsel for respondents No.3 & 4.

CORAM : MANISH PITALE J

DATED : 14.10.2019

By this appeal, the appellant insurance company has challenged judgment and order dated 01.12.2018 passed by the Commissioner / Labour Court, whereby application filed by the respondents No. 1 & 2 under Employees' Compensation Act, 1923 was allowed and compensation was granted to respondents No.1 & 2.

2. The learned counsel appearing for the appellant insurance company has pointed out that there are certain errors committed by the Commissioner while passing the impugned judgment and order. Firstly, it is pointed out that the Commissioner himself in paragraph 29 noted that this was a case wherein the appellant could recover the amount of compensation payable to the respondents No.1 & 2 from respondents No.3 herein

(non-applicant No.2 before the Commissioner), who was found to be the employer of the deceased. It is stated that despite the aforesaid specific finding, the Commissioner in the operative part of the impugned order failed to give a direction of pay and recover. Secondly, it was pointed out that the Commissioner also erred in directing that the claimant would be at liberty to claim penalty from the non-applicants, if they failed to make payment of compensation amount. It was submitted that payment of liability towards penalty could not be foisted on the appellant insurance company at all. Thirdly, it was pointed out that the Commissioner committed an error in directing the appellant insurance company along with respondent No.3 to pay amount of Rs.5000/- as funeral expenses. It was emphasized that under Section 4(4) of the said Act, the said amount was in addition to compensation and that therefore, the liability would be that of only the employer i.e. respondent No.3 herein.

3. The learned counsel appearing for respondent No.3 opposed the aforesaid contentions raised on behalf of the appellant insurance company.

4. There is no dispute about the fact that the Commissioner in paragraph 29 of the impugned judgment and order itself specifically found that the

appellant insurance company was entitled to recover the amount that would be payable to respondents No.1 & 2 from the respondent No.3 herein. There is no challenge to the impugned judgment and order passed by the Commissioner on the part of the respondent No.3 herein. Therefore, it is evident that the Commissioner committed an error in not giving an appropriate direction in the operative part of the order for pay and recover from the respondent No.3. It is also found that the liability of penalty could not be foisted on the appellant insurance company in the present case.

5. The contention raised on behalf of the appellant based on Section 4(4) of the aforesaid Act, in respect of funeral expenses is also correct because, the said provision also specifically uses the words **“in addition to the compensation under sub Section (1)”** in respect of payment of amount towards funeral expenses. Thus, the amount towards funeral expenses does not form part of compensation and the amount has to be exclusively paid by respondent No.3.

6. In the light of the above, it is found that present appeal needs to be allowed and the impugned judgment and order passed by the Commissioner needs to be modified in the following manner, while maintaining the quantum of

compensation and other amount granted in favour of respondents No.1 & 2 :-

(i) The appellant insurance company is granted liberty to recover the amount payable under the impugned judgment and order to respondents No.1 & 2 from the respondent No.3 herein.

(ii) The liability of payment of penalty, if any, would be only on respondent No.3.

(iii) The liability of payment of Rs.5000/- towards funeral expenses as per clause (3) of the impugned judgment and order shall be exclusively that of the respondents No.3.

7. The appeal is allowed in above terms. No order as to costs.

CIVIL APPLICATION (F) No.3635 OF 2019

This is an application filed on behalf of the respondents No.1 & 2 seeking permission to withdraw the amount deposited by the appellant insurance company before the Commissioner.

2. In view of the modification of the impugned judgment and order by this Court, the present application is partly allowed and respondents No.1 & 2 are granted liberty to

withdraw the amount deposited by the appellant insurance company before the Commissioner, except for the amount of Rs.5000/- towards funeral expenses, which shall be disbursed to the appellant insurance company.

3. Needless to say, in terms of this order disposing of the appeal, the respondents No.1 & 2 shall be at liberty to recover the amount of Rs.5000/- towards funeral expenses from the respondents No.3 employer.

4. Application is disposed of. Pending applications are also disposed of.

JUDGE

KOLHE