IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 2659 OF 2021
IN
FIRST APPEAL STAMP NO. 15141 OF 2020

Ananda Mahadeo Ambekar and another … Applicants
Versus
The Oriental Insurance Co. Ltd., and another … Respondents

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Mr. D. S. Pawar, Advocate for applicants
Mr. U. S.Malte, Advocate for respondent No.1
Mr. V. M. Jaware, Advocate for respondent No.2

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 23rd JULY, 2021
PRONOUNCED ON : 07th SEPTEMBER, 2021

PER COURT :-

. This is an application for withdrawal of amount of compensation deposited by respondent No.1 – Oriental Insurance Company Limited, pursuant to the award/order passed by the Commissioner under the Workmen's Compensation Act.

2. The applicants herein are the parents of the deceased Kailash, who passed away on 19.03.2017 while working on a thresher attached to the tractor bearing registration No.MH-37/L-5553. Since the Commissioner found it to be a case of

death of deceased Kailash arising out of and in the course of his employment with the tractor owner - respondent No.2 herein, it was pleased to award compensation amounting to Rs.6,29,760/-, besides 50% thereof towards penalty with 12% interest per annum on both the amounts of compensation and penalty, as well.

3. Shri U. S. Malte, learned Advocate for respondent No.1 – Insurance Company would submit that the deceased died while harvesting grams. He was not working / operating either the tractor or the thresher. There was no evidence to indicate the deceased was in the employment of the tractor owner. The land belonged to some one else, while the thresher belonged to some other person. Both the land and the thresher owners were not parties to the proceedings before the Commissioner. Learned Advocate described the process of threshing to ultimately submit that the statement of the brother of the deceased indicates that he (deceased) was engaged in harvesting gram. The policy of insurance of the tractor does not cover the risk of an employee. Moreover, the tractor was meant for commercial use. The same was being found to have been used for agricultural operations. According to the learned Advocate, for all aforesaid reasons, the Commissioner ought not to

have directed the appellant – Insurance Company to pay the compensation.

4. Perused the impugned award to find that the Commissioner, on appreciation of the evidence and all the police papers, came to the conclusion that the case propounded by the applicants in their application for compensation was made out. Respondent No.2 – the tractor owner, has admitted that the deceased was serving as a Labour on his tractor. At the relevant time, the deceased was engaged in harvesting gram and threshing the same on threshing machine. The Insurance Company did not make its own investigation. The witness examined on behalf of the Insurance Company admitted that the policy of insurance was "*Kisan Package Policy*" and given to the vehicles used in the agricultural field.

5. The thresher was being operated with the power supply to it through the tractor. Had the deceased really not been engaged in operating threshing machine, there was no reason for mishap to occur. Suffice it to say that on appreciation of the evidence before it and the tractor owner to have admitted the deceased to have been in his employment to operate the tractor, the learned Commissioner,

prima-facie appears to have reached the correct conclusion. The submissions made by the learned Advocate for the Insurance Company could only be considered in the appeal after the same is admitted and heared on merits after condonation of delay in preferring the said appeal.

6. The applicants are poor and the rustic parents of the deceased. They have lost their bread winner. In the circumstance, I am inclined to allow the applicants to withdraw 60% of the amount in deposit with the Commissioner for Employee’s Compensation, Parbhani, with interest accrued thereon, on furnishing usual undertaking.

7. The civil application is disposed of accordingly.

[R. G. AVACHAT, J.]

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