IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.12060 OF 2022
IN FA/2102/2022

USHABAI NAGNATH NAGURE AND ANR ..APPLICANTS

VERSUS

THE MANAGER, KOHINOOR FEEDS AND FATS LTD., (OIL MILL) NANDED AND ANR ..RESPONDENTS

WITH
CIVIL APPLICATION NO.11765 OF 2022
IN FA/1051/2022

USHABAI W/O NAGNATH NAGURE AND ANR ..APPLICANTS

VERSUS

THE MANAGER, KOHINOOR FEEDS AND FATS LTD., (OIL MILL) NANDED AND ANR ..RESPONDENTS

…

Mr. Vaibhav B. Dhage, Advocate for the Applicants.
Mr. Girish S. Rane, Advocate for Respondent No.1.
Mr. S. G. Chapalgaonkar, Advocate for Respondent No.2.

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CORAM : S. G. DIGE, J.

DATED : 22nd AUGUST, 2022.

PER COURT:-

1. Heard learned counsel for the applicants, learned counsel for Employer and learned counsel for the Insurance Company.

2. The learned counsel for the applicants submits that, Employer and Insurance Company have

challenged the order passed by the learned Commissioner for Employee's Compensation and Judge, Labour Court, Nanded. Both the respondents have deposited the award amount before the learned Commissioner as per Section 30 of the Employees Compensation Act, 1923. The applicants are legal heirs of the deceased. The deceased was Karta of the applicants' family. The applicants are the old age parents of the deceased. They require the amount for medical purpose and day to day expenses. Hence, requested to allow the application.

3. The learned counsel for the Insurance Company submits that, the Insurance Company has challenged the impugned order on various grounds. One of the ground is that, no safety measures were provided by the Employer to the employees of the oil factory. The premium of insurance was paid to the employees who were drawing salary of Rs.4000/-, but Tribunal has considered the salary of the deceased Rs.7800/-, which is more than the premium. There are other grounds raised by the appellants in the Appeal. The sole responsibility of paying compensation is of Employer, but these facts are not considered by the learned Trial Court. If permission to withdraw the amount is granted and Insurance Company succeeded in Appeal, it would be difficult for the Insurance Company to recover the amount. Hence, requested to dismiss the application against Insurance Company.

4. It is the contention of the learned counsel for Employer that, the report of the Inspector shows that all safety measures were provided to the employees. The premium was paid to the Insurance Company for insurance of all the employees. Hence, Insurance Company is liable to pay the compensation.

5. The learned counsel for the Employer further submits that, the duty assigned to the deceased was for supervising the refinery machine. No safety measures were required for that duty. Hence, requested to dismiss the application against the Employer.

6. I have heard all the learned counsel.

7. Admittedly, deceased died during the course of the employment. The Tribunal has awarded compensation against the Employer and the Insurance Company. The applicants are old age parents of the deceased. The issue raised by the learned counsel for the Employer and Insurance Company can be considered at the time of final hearing, but considering the submissions of both the learned counsel, in my view, Insurance Company is liable to pay 40% compensation out of deposited amount by Insurance Company and Employer is liable to pay 60% compensation out of the deposited amount by Employer. This percentage of compensation would not be connected to the merits of the matter. The

appeals would be decided on its own merits. Hence, I pass the following order:

ORDER

(a) The applications are allowed.

(b) The applicants are permitted to withdraw 60% amount alongwith accrued interest thereon out of the deposited amount by the Employer on furnishing undertaking.

(c) The applicants are permitted to withdraw 40% amount alongwith accrued interest thereon out of the deposited amount by the Insurance Company on furnishing undertaking.

(S. G. DIGE)
JUDGE

Devendra/August-2022