IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 1679 OF 2022 IN FAST/22884/2020

VIJAYA SUBHASH SARUK AND OTHERS AURANGABAD
VERSUS
HDFC ERGO GENERAL INSURANCE CO. LTD., THROUGH ITS BRANCH MANAGER AND OTHERS

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Mr. S.S. Dargad, Advocate h/f Mr. S.G. Chapalgaonkar, Advocate for the Applicant
Mr. P.D. Dadpe, Advocate for Respondent nos. 1 to 6.
Mr. R.D. Gaikwad, Advocate h/f Mr. S.G. Kawade, Advocate for Respondent No.7

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CORAM : SHRIKANT D. KULKARNI, J.
DATE : 21st FEBRUARY, 2022

PER COURT:-

1. It is an application for withdrawal of amount moved by the applicants / original claimants.

2. Heard Mr. P.D. Dape, learned counsel for the applicants / original claimants, Mr. Dargard holding for Mr. S.G. Chapalgaonkar, learned counsel for the appellant / insurance company and Mr. Gaikwad holding for Mr. S.G. Kawade, learned counsel for respondent no. 2.

3. Mr. Dargad holding for Mr. S.G. Chaplagaonkar, learned counsel for the appellant / insurance company and Mr. Gaikwad holding Mr. Kawade, learned counsel for respondent no.2 / sugar factory strongly opposed to allow this application for withdrawal of amount. Both of them submitted that there was no relationship as employer-employee between the deceased and sugar factory. The deceased was working as a labour in the field of Subhash Ghayal at the time of the accident.

4. Mr. Dargad, submitted that the deceased was proceeding from the field of Subhash Ghayal by sitting on the head of the Tractor, when met with an accident. As such, his risk is not covered under the policy. He further submitted that the Tractor was registered for agricultural purpose. However, the Tractor seems to have been used for transporting sugarcane from the field to the sugar factory, which amounts to commercial purpose. It amounts to breach of the terms and conditions of the insurance policy.

5. Mr. Dargad, learned counsel for the appellant submitted that the Commissioner has committed an error in accepting the income of the deceased at Rs.9,000/- per month. As per the record, the deceased was earning Rs.8,000/- per month.

6. Mr. Dargard in support of his defence of breach of policy, placed his reliance on the citations in case of ***United India Insurance Co. Ltd. Vs. Laila Ayyub Sayyad and others*** reported in ***2016 SCC Online Bom 16116*** and ***United India Insurance Co. Ltd, Auranagabad Vs. Chandrakala W/o Babasaheb Mane and others*** reported in ***2021 (1) Mh.L.J. 120***. By taking the help of the above said citations, Mr. Dargad submitted that it is a clear case of breach of policy. The appellant is ready to work out the matter finally at admission stage. The application for withdrawal of the amount may be rejected.

7. Mr. Dadpe, learned counsel for the original claimants vehemently submitted that whatever the defences raised by the appellant / insurance company, those were considered by the Commissioner for Workmen's Compensation and Civil Judge, Senior Division, Osmanabad and turned down those pleas with reasons.

8. Mr. Dadpe, learned counsel for the original claimants invited my attention to para no. 17 of the impugned judgment and submitted that the claimants have established the relationship of

employer-employee. He further invited my attention to para no. 22 of the impugned judgment and submitted that the Tractor involved in the accident was insured with the appellant insurance company. It was a package policy and it was for agriculture and forestry vehicle. The Tractor was transporting sugarcane as agricultural produce, and therefore, it cannot be said to be a breach of the terms and conditions of the insurance policy.

9. Having regard to the submissions of the learned counsel for both the sides, I have gone through the impugned judgment and order passed in W.C.A. No. 29/2014 by the Commissioner Workmen's Compensation and Civil Judge, Senior Division Osamanabad. The Commissioner was pleased to award compensation of Rs.7,62,480/- with interest at the rate of 12% peer annum with effect from 28.01.2014 till it is deposited by the respondent nos. 1 to 3. Respondent no. 1 to 3 were held jointly and severally liable to pay the compensation amount. Respondent nos. 1 and 2 were directed to pay penalty of Rs. 3,81,240/- to the petitioners in addition to compensation amount.

10. The impugned judgment and order passed by the Commissioner for Workmen's Compensation is under scrutiny at

the hands of this Court. The appellant has raised four defences as argued by Mr. Dargard, learned counsel for the appellant / insurance company. He has also placed his reliance on two citations referred above in support of his submissions.

11. It may not be appropriate to touch the merits of the appeal at this stage while considering the application for withdrawal of amount. At the same time, the rights and the interest of the appellant involved in the appeal also needs to be considered while deciding the application for withdrawal of amount.

12. On going through the impugned judgment passed by the learned Commissioner for Workmen's Compensation and Civil Judge, Senior Division, Osmanabad, it *prima facie* appears that the learned Commissioner has considered the defence raised by the insurance company as well as the sugar factory and turned down the same by recording findings supported by the reasons and evidence. The scrutiny of the evidence with legal position would be done at the time of hearing of the appeal.

13. Mr. Dadpe, pointed out that the claimants' family has lost the sole earning member of the family in the year 2013 and they have not received any amount of compensation till this date. By

looking to the intent of the Parliament while introducing the Workmen's Compensation Act, it is necessary to allow the original claimants to withdraw 50% amount of compensation deposited by the appellant / insurance company on furnishing solvent surety of the like amount coupled with necessary undertaking with the Commissioner for Workmen's Compensation and Civil Judge, Senior Division, Osmanabad. It would take care of legal interest of the appellant / insurance company involved in the appeal. If 50% of the amount is allowed to withdrawn, no prejudice would be caused to either side. It would take time to receive R & P and dispose of the appeal since delay has been condoned today itself. By considering these aspects, I proceed to pass the following order.

O R D E R

(i) The application for withdrawal of amount is hereby allowed.

(ii) The applicants / original claimants are hereby permitted to withdraw 50% of the amount of compensation deposited the insurance company with accrued interest thereon on furnishing solvent surety of the like amount coupled with the undertaking with the Commissioner for Workmen's Compensation and Civil Judge, Senior Division, Osmanabad.

(iii) Remaining 50% of the amount of compensation with accrued interest thereon shall be invested in the fixed deposit with any nationalized Bank initially for a period of one year with clause of renewal.

(iv) Inform to the Commissioner for Workmen's Compensation and Civil Judge, Senior Division, Osmanabad for information and necessary compliance.

(v) The civil application is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane