

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application No. 2453 / 2017

in

First Appeal No. 576 / 2015

Shri. Sambhaji Kaka Zambre and Anr.

— Applicants

Versus

M/s. Vidyut Operentis Seva Society

— Respondents

Alongwith

Civil Application No. 187 / 2015

and

Civil Application No. 188 / 2015

in

First Appeal No. 576 / 2015

M/s. Vidyut Operentis Seva Society

— Applicant

Versus

Shri. Sambhaji Kaka Zambre and Ors.

— Respondents

Ms. Rui Danawale i/by Mr. Umesh Mankapure, Advocate for the Applicant in CAF-2453/2017 and for Respondent No.1 and 2 in FA-576/2015.

Mr. Kuldeep U. Nikam, Advocate for the Appellant in FA and for Applicant in CAF-187 & 188 of 2015.

Mrs. Anjali R.S. Baxi, Advocate for Respondent No.3 and 4.

CORAM : SANDEEP K. SHINDE, J.

DATE : 8th MARCH, 2022.

P.C.

1. This appeal under Section 30 of the Employees' Compensation Act, 1923, is preferred by the Employer against the judgment and order dated 13th August, 2014 passed in Workmen Compensation Application No. 20/B-6/2013 by learned Commissioner, Employees Compensation, Sangli.

2. Briefly stated facts of the case are like this;

Appellant was employer of deceased workman, who died in the course of his employment by electrocution on 29th October, 2009, while repairing the transformer in Madhavanagar, at Sangli on the establishment of Respondent No.2 and 3. Respondent No. 1 and 2 are dependent parents of deceased. Soon after the accident, Appellants paid Rs. 40,000/- to Respondent No. 1 and 2, parents of deceased. Supposedly, deceased had insurance coverage of Oriental Insurance Company. As such, Oriental Insurance Company paid Rs. 2,30,000/- to the Appellant, which in turn, he paid to parents of deceased,

Respondent No.1 and 2. In addition thereto, Appellants paid Rs. 2,00,000/- to parents of deceased, workman, through Respondent No. 3 and 4. These are undisputed facts. Thus, Appellant has paid in all, Rs. 04,70,000/- to the parents of deceased. Yet, parents of deceased filed an application under Section 22 of the W.C. Act, for compensation and impleaded the Appellant, therein, as Respondent No.4. Appellants had engaged lawyer to defend the claim. However due to strike of lawyers in Sangli District, the Appellant was not defended.

. It is Appellants case that, parents of the deceased 'Claimants' did not disclose to the learned Commissioner, that they had received Rs. 04,70,000/- as advances on account of compensation from the Appellants. As a consequences, the learned Commissioner directed the Appellant to pay Rs. 6,07,384/- with interest @ 12% p.a. to the parents of deceased by judgment and order dated 13th August, 2014 without deducting advances, from compensation in terms of proviso to Section 8 of the W.C. Act. It appears Appellants were unaware of the impugned judgment and therefore could not prefer an appeal within time. As such, in Civil Application No. 186/2015, this Court vide order dated 4th March, 2015, condoned the

delay and directed the Appellant to deposit Rs. 1,37,384/- in the Office of Commissioner, within four weeks. Appellant has complied with the said order.

3. Mr. Nikam, learned Counsel for the Appellants, has taken me through the relevant documents and evidence to show that parents of the deceased had received Rs. 04,70,000/- from the Appellants. Yet, this fact was not disclosed by them to the learned Commissioner in application for claim filed under the Workmen's Compensation Act. Mr. Mankapure, learned Counsel appearing for the Claimants, does not dispute this fact.

4. Thus, having regard to the facts of the case, the impugned judgment and order dated 13th August, 2014 passed by the Commissioner, Employees Compensation, Sangli, in W.C. Application No. 20/B-6/2013, is set aside. The Commissioner, Employees Compensation, Sangli shall decide the said application afresh, in accordance with law by allowing deduction of advances received by the parents of deceased, workman as permissible and in accordance with law. Parties to claim application, shall appear before the Commissioner, Employees Compensation, Sangli on 18th April, 2022. Having

regard to the facts of the case, Commissioner, Employees Compensation, Sangli shall make an endeavor to dispose of the application within 60 days from the date of first appearance of the parties. All contentions of parties are expressly kept open.

5. Appeal is partly allowed and disposed of in the aforesaid terms alongwith all Civil Applications.

(SANDEEP K. SHINDE, J.)

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