

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

956 CIVIL APPLICATION NO.2385 OF 2023

IN

**FA/2814/2023 WITH CA/14927/2022 IN
FA/2814/2023**

WITH

FIRST APPEAL NO.2814 OF 2023

SUMITRA SURESH PAWAR AND ANOTHER

VERSUS

THE NEW INDIA ASSURANCE CO LTD AND ANOTHER

...

Advocate for Applicant: Mr. Pandurang S Koshti

Advocate for Respondent No.1: Mr. S. R. Bodade

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CORAM : ARUN R. PEDNEKER, J.

DATE : 23rd AUGUST, 2023

PER COURT:

1. The present first appeal is filed by the insurance company challenging the order dated 21.04.2022, passed by the Commissioner for Employees Compensation Act and Judge, Labour Court, Nanded.

2. The son of claimant no.1 expired while he was in employment of respondent no.2, while driving truck from Nanded to Loha. The truck had met with an accident. The claim was filed before the Commissioner and the same was partly allowed. The insurance company has challenged the same in the present first appeal.

3. The claim of the insurance compancy is that it is not established that the deceased was an employee of respondent no.2 and that the accident has occurred on account of his own error and there is contributory negligence. It is not certain that at the time of accident he was the cleaner or driver or whether he has taken over the driving from the driver of the truck.

4. Prima facie it can be said that in the written statement filed by respondent no.2 there is admission that the deceased was the employee of respondent no.2 at the relevant time. If there is contributory negligence, the same would be determined in the course of this appeal.

5. Thus, in the fitness of the case, the mother of the deceased – claimant no.1 is permitted to withdraw Rs.3,00,000/- (Rs. Three Lacs only) as of today from the amount deposited in this court along with accrued interest on usual undertaking. The civil application for withdrawal of amount stands disposed of.

6. The first appeal is admitted.

[ARUN R. PEDNEKER, J.]