

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

**CIVIL APPLICATION NO.9563 OF 2023
IN FA/310/2022**

**RANI AMOL GURAV AND ANOTHER
VERSUS
EXE. ENGINEER, MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION CO. LTD., SOLAPUR AND ORS**

...
Mr. D. S. Patil h/f Mr. S. S. Gangakhedkar, Advocate for the
Applicants.

Mr. U. S. Malte, Advocate for Respondent No.1.

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 04th AUGUST, 2023.

PER COURT:-

1. By this application, the applicants are seeking withdrawal of the amount of compensation deposited by the respondent/alleged employer. The Commissioner for Workmen's Compensation, Osmanabad passed an award for Rs.16,38,525/- alongwith interest at the rate of 12% per annum and also the penalty at the rate of 50%.

2. The respondent filed appeal assailing the findings as regards to the employer employee relationship and also the penalty that has been awarded without issuing show cause notice. The amount of Rs.46,04,926/- has been deposited with the Commissioner.

3. The learned Advocate appearing for the applicants submits that for last 11 years the applicants are fighting for

compensation towards death of the deceased, who died while carrying instruction from the employee of respondent/MSEDCL. He submits that the Commissioner after re-evaluation of the evidence has passed award in favour of the applicants. The applicants are facing difficulties to pull on day to day life since the death of the deceased and therefore, they require immediate solace.

4. Mr. Malte, learned Advocate appearing for respondent vehemently submits that there is absolutely nothing to show that the deceased was within the employment of MSEDCL. He would submit that the Commissioner has considered monthly income of the deceased at the rate of Rs.15,000/- and extended jurisdiction while passing the award. He would further submit that the penalty is imposed without issuing show cause notice, as contemplated under Section 4-A of the Act. Therefore, he urges that the appeal itself can be taken up for final hearing instead showing indulgence in the present application seeking withdrawal of the amount.

5. Having considered the submissions advanced, it is apparent that the Commissioner has dealt with the issue raised by the respondent and recorded findings on the basis of the material that was tendered into service. *Prima facie*, the findings are in favour of the applicants. Since 2011 they are waiting for the compensation. In that view of the matter, some solace needs to be given to them. Hence, the following order:-

ORDER

a. Civil Application is partly allowed.

b. The applicants are permitted to withdraw Rs.10,00,000/- (Rs. Ten Lakhs Only) out of the amount deposited with the Commissioner for Workmen's Compensation at Osmanabad subject to furnishing of undertaking to the satisfaction of the Commissioner that in case, the appeal is allowed and directions are given to refund of the amount, they shall re-deposit the amount within a period of twelve weeks from the date of such order.

c. Remaining amount be kept in Fixed Deposit with Nationalized Bank initially for a period of one year with renewal clause till disposal of the appeal.

d. Civil Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE