



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

33 FIRST APPEAL NO. 2510 OF 2021
WITH
CIVIL APPLICATION NO. 857 OF 2018
IN FA/2510/2021
WITH
CIVIL APPLICATION NO. 10301 OF 2021
IN FA/2510/2021

NEW INDIA ASSURANCE CO. LTD., THR ITS AUTHORIZED
SIGNATORY, AURANGABAD

VERSUS

VIMALBAI MADHUKAR KAKADE AND ORS

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Advocate for Appellant : Mr. Deshmukh Mohit R.
Advocate for Respondent Nos. 1 to 5 : Mr. A. P. Khedkar and
Mr.P. B. Khedkar
Advocate for Respondent No. 6 : Mr. Deepak K Rajput

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CORAM : KISHORE C. SANT, J.

DATE : 21.10. 2024.

PER COURT :

WITHDRAWAL

1. Heard the parties for some time.
2. This application is filed for withdrawal of the amount of compensation deposited by the appellant insurance company

in this Court.

3. The application is vehemently opposed by the learned Advocate for the respondent Insurance Company. He submits that in the present proceedings the learned Commissioner under the Employees Compensation Act allowed the application and directed to pay the amount and thereafter to recover it from the employer respondents. He submits that there is no such provision under the Employees Compensation Act to direct the insurance Company to first pay and thereafter to recover unlike the provision in the Motor Vehicles Act.

4. Except this there is no serious contention. In view of the same, no doubt this question needs to be decided as Question of Law.

5. It is informed that respondent No. 5 i.e. the original Claimant No. 5 has expired and his legal representatives are already on record and the amount to be disbursed in between applicant Nos. 1 to 4.

6. The applicant seeks leave to delete respondent No. 5.
7. Amendment be carried in clause title of the appeal and the application .
8. Considering that the applicant/claimant is poor person working as a driver, it would be in the interest of justice not to deprive him, hence following order :

ORDER

- (i) The Civil Application is partly allowed and disposed off.
- (ii) The applicant is permitted to withdraw 50% of the amount deposited with the Commissioner under the Employees Compensation Act, on furnishing usual undertaking to the satisfaction of the Commissioner, that in case the appeal is decided against the applicant/Claimant, he shall re-deposit the said amount alongwith interest within 12 weeks from the said judgment with the Commissioner.

STAY

1. Since the amount is already deposited in the office of learned Commissioner, there shall be stay to the impugned judgment and order till final disposal of the appeal.

2. The application stands disposed off.

FIRST APPEAL

1. After hearing the parties, following substantial question of law is framed :

“As to whether under the Employees Compensation Act, the Commissioner can pass an order of pay and recover against the insurance company ?”

2. Instead of taking the petition for final disposal it would be in the interest of justice to decide this question at the stage of admission first on next date.

3. Since the R & P is already received, stand over to **16.12.2024**, with an understanding to the parties that if time

permits the Court may take up the appeal for final disposal at the stage of admission.

(KISHORE C. SANT)
JUDGE

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