



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

First Appeal No. 958 of 2019

Vidharbha Bottlers Pvt. Ltd. Through its Proprietor/Partner/Director, Khapari, Nagpur ..vs..
Smt. Domabai wd/o Eknath Patil and anr.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. W. Sambre, Advocate for respondent no. 1

CORAM : ANIL L. PANSARE J.

DATED : 04-01-2024

On 14-1-2022, following order was passed on
Civil Application (CAF) No. 2722/2019.

*“01] By this application, the respondent No.1
has sought dismissal of the appeal for non-
compliance of proviso under Section 30 of the
Employees Compensation Act, 1923.*

*02] Shri S.D. Shukla, learned counsel for the
appellant states that an amount of Rs.3,33,000/-
has been deposited and that the balance amount
will be deposited within three weeks. In the light
of the said statement, the application stands
disposed of.*

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*03] Parties are put to notice that an endeavour
will be made to dispose of the appeal finally at the
stage of admission.*

04] Call for the record and proceedings.

05] Stand over after three weeks.”

2. Learned counsel for respondent no. 1 submits that
the appellant has not deposited the balance amount as
assured. The Registry's remark also indicate the same.

3. My attention is invited to 3rd proviso to Section 30 of the Employees' Compensation Act, 1923 which reads thus :

“(3) The provisions of Section 5 of the Limitation Act, 1963 (36 of 1963) shall be applicable to appeals under this section.”

4. Learned Commissioner vide impugned order dated 1-4-2019 has directed the appellant (non-applicant before the Commissioner) to pay the amount of compensation of Rs. 2,73,267/- to the respondent no. 1 (original applicant no. 1) along with interest at the rate of 12% p.a. from the date of an accident till its realization. Learned Commissioner has also directed the appellant to pay Rs. 54,653/- towards penalty and Rs. 5,000/- towards funeral expenses to respondent no. 1 within two months from the date of order. The incident is said to have occurred on 20-7-2011. Thus by arithmetic calculation of interest, the amount of compensation would come to more than Rs. 3,33,000/-, the amount which has been deposited by the appellant and thus, the statement was made that balance amount will be deposited within three weeks. The balance amount has been not deposited and, therefore, the prayer has been made by the learned counsel for the respondent no. 1 to dismiss the appeal. He has placed reliance upon the order dated 11-1-2013 passed by this Court in First Appeal No. 695/2012 (The National Insurance Co. Ltd. Vs. Smt. Afroz Janha Wd/o Wahab Khan and ors.) wherein the Court held that since the appellant has not deposited the amount of compensation

within 30 days and since the memorandum of appeal was not accompanied by a certificate of the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against, the appeal will be not maintainable in terms of 3rd proviso to Section 30 of the Employees' Compensation Act.

5. Similar is the position here. Despite assurance, the appellant has not deposited the balance amount. It appears that the Commissioner's certificate as required has also been not annexed. The appeal, therefore, is not maintainable and stands dismissed accordingly.

6. At this stage, learned counsel for the respondent no. 1 makes a request to permit respondent no. 1 to withdraw the amount deposited by the appellant. Permission is granted. Respondent no. 1 is permitted to withdraw the amount deposited by the appellant on furnishing usual undertaking.

(Anil L. Pansare, J.)