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916 sr. no..odt

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

**CIVIL APPLICATION NO. 13345 OF 2024
IN FA/237/2025**

Jayshri Sandip Badgujar And Ors

....Applicant

VERSUS

United India Insurance Co Ltd Through Branch Manager And Anr

.....Respondent

.....

Advocate for Applicant : Mr. Mayure Pramod C.

Advocate for Respondents : Swapnil S. Rathi For R/1

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 6TH FEBRUARY, 2025.

ORDER :-

ON APPEAL :-

Heard Mr. Rathi, learned advocate for appellant and Mr. Mayure, learned advocate for respondent.

2. Mr. Rathi submits that claimants have not proved that death of deceased employee is caused on account of injuries suffered by him in the accident which occurred during the course of his employment. According to him, deceased suffered COVID infection, consequently he died. IN absence of post-mortem report, case of the claimants could not have been accepted.

3. Per contra, Mr. Mayure, advocate for respondent submits that the deceased had suffered fracture in the accident and succumbed to the injuries.

4. In view of the submissions advanced, the following substantial questions of law emerge for consideration of this second appeal.

(a) Whether death of deceased can be attributed to injuries suffered by him in the motor vehicular accident involving the insured vehicle;

(b) Whether on the basis of medical evidence on record, conclusions can be drawn that deceased lost his life consequent to injuries suffered in the accident which took place during the course of employment as such death can be attributed to the employment causes;

5. In view of aforesaid substantial questions of law, ***ADMIT***

6. Mr. Mayure, Advocate waives notice for respondents.

ON STAY APPLICATION

Mr. Rathi, learned advocate for applicant submits that the entire amount as per the award passed by Commissioner has been deposited with the office of Commissioner. The statement is not controverted. Hence, application is allowed and disposed of.

ON APPLICATION FOR WITHDRAWAL

1. Heard learned advocates for respective parties.

2. The issue involved in present appeal is, as to whether the deceased died during the course of and arising out employment injuries. It is not in dispute that the deceased had suffered injuries in the accident and he was hospitalized for treatment. He died in the hospital while he was under treatment. It is the case of the respondent insurance company that death has occasioned on account of COVID 19 infection and not because of the accidental injuries. Claimants have relied upon evidence of Dr. Rupesh Patil. The Commissioner accepted such evidence to conclude that the death is attributed to the employment injuries, consequently, award is passed.

3. Apparently, the award is in favour of claimants. They are certainly entitled for partial withdrawal of amount. In the result, application is allowed. the applicants are permitted to withdraw 50% of the amount of compensation alongwith interest accrued thereon, which has been deposited by respondent insurance company, subject to condition that they shall furnish an undertaking to the satisfaction of the Commissioner, Employees Compensation, that they shall refund/re-deposit the amount within six weeks, in case an adverse order is passed and such directions are issued in the appeal. Application stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-