



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.206 OF 2023

WITH

CIVIL APPLICATION NO. 2130 OF 2013

IN

FIRST APPEAL NO.206 OF 2023

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The Commissioner,

Nashik Municipal Corporation, Nashik

...Appellant

(Orig. Defendant)

Versus

1. Smt. Sunanda Dadasaheb Kale,
Age: 42yrs. Occ. Household,
2. Sunny Dadasaheb Kale,
Age: 20yrs, Occu: Service,
3. Pankaj Dadasaheb Kale,
Age: 18yrs, Occu: Education,
All R/o. Vir Dadasaheb Rajgruah,
Anand Nagar, Behir d Nasardi Bridge,
Nashik Road, Nashik.

...Respondents

(No.1 to 3 Orig. Applicants)

Mr. M. L. Patil for the Appellant.

Ms. Seema Sarnaik, Sr. Adv. a/w Ms. Sangeeta Salvi & Ms. Pooja Chettiar
for the Respondents.

CORAM : M. M. SATHAYE, J.
RESERVED ON : 12th NOVEMBER, 2025.
PRONOUNCED ON : 16th FEBRUARY, 2026.

**JUDGMENT :**

1. This First Appeal is filed challenging the impugned Judgment and Order dated 27.04.2012 passed by the Commissioner for Workmen's Compensation and The Judge, Labour Court, Nashik at Nashik in WC(F)No.35/2007(WC.(SL)No.103/2007). By the said impugned Judgment and Order, the application for compensation filed by the Respondents is allowed and the Appellant/Defendant Municipal Corporation is directed to pay compensation of Rs.3,06,180/- with interest at the rate of 12% p.a. from 01.03.2006 till its realization.

2. The Appellant is Defendant. The Respondents are the Applicants.

3. Few facts necessary for disposal of this appeal, are as under :

3.1 The Respondents are widow and sons of deceased Dadasaheb Laxman Kale, who was working as a fireman in the employment of the Appellant-Municipal Corporation. On 01.02.2006 when deceased Dadasaheb was on his duty to extinguish fire on a building, he was standing on tin roof, which fell down, seriously injuring Dadasaheb, resulting in his death. The Respondents demanded compensation for death of Dadasaheb from Appellant-Municipal Corporation under notice dated 24.10.2007. Since, the demand was not complied, the Respondents filed claim under Workmen's Compensation Act, 1923, ('WC Act' for short).

3.2. The case of the Respondents is that at the time of death, Dadasaheb was 50 years old and was earning monthly salary of Rs. 10,559/- as per his last pay slip. The Respondents claimed Rs. 3,07,800/- as compensation. The Appellant-Municipal Corporation resisted the claim by filing written statement. It is not disputed that the deceased Dadasaheb was serving as firemen and died in the accident during the course of employment. The age and monthly salary of deceased Dadasaheb was



denied as well as the liability to pay compensation was also denied. The Appellant-Municipal Corporation contended that already an amount of Rs. 1,00,000/- was given to the Respondents as 'additional compensation' and an amount of Rs. 2,75,000/- is received by the Respondents from group insurance claim and the Respondent No. 2 (Sunny) has been taken in the employment on compassionate ground. Thus, it was contended that no further liability of payment can be extended and prayer was made to dismiss the claim being false.

3.3. The Trial Court framed issues. All the Respondents viz., Sunanda, Sunny and Pankaj examined themselves. They also produced documentary evidence. The Appellant-Municipal Corporation did not examine any witness.

3.4. The learned Commissioner for Workmen's Compensation, by impugned judgment and order allowed the application, as already indicated above.

4. Mr. Patil, learned counsel appearing for the Appellant-Municipal Corporation submitted that the learned Commissioner erred in holding that the Respondents are entitled to receive any compensation under WC Act. He contended that the Respondents have already received an amount under the head of 'additional compensation' and from the group insurance policy purchased by the Municipal Corporation and one of the legal heir has been given compassionate appointment. He submitted that the compensation of Rs. 2,75,000/- received by the Respondents was compensation paid from group insurance policy purchased by the Appellant-Municipal Corporation, for which premium was paid by the Municipal Corporation. He relied on Order No. 1186 dated 05.03.2005 issued by the Commissioner of the Appellant-Municipal Corporation. He submitted that from the said order, it can be seen that under policy



decision and a resolution of standing committee, a policy was purchased from The Oriental Insurance Company Ltd. for the period from 12.03.2005 to 11.03.2006, covering the date of the accident (01.02.2006) and it was resolved that the premium be paid by the Corporation. He submitted that therefore, since the Respondents have received amount from said group insurance policy, the Appellant is not liable to pay any more amount. He also relied upon the receipt of the insurance company showing payment of premium and a list of employees from Fire Brigade Department including the name of deceased Dadasaheb at serial No. 54. He relied upon following judgments in support of his case:

(i) Associated Electrical Agencies, Worli, Bombay vs. Commissioner for Workmen's Compensation And Judge, 3rd Labour Court, Bombay and Anr. [1995 (1) Mh.L.J. 379].

(ii) Dhropadabai and Ors. vs. Technocraft Toolings [(2015) 14 SCC 454).

5. Per contra, Ms. Sarnaik, learned Senior Advocate appearing for the Respondents supported the impugned Judgment and Order. She submitted that it has come on record under pay slip (Exh-U/16) that certain amount was deducted from the monthly salary of deceased Dadasaheb towards insurance premium and therefore, even if the insurance premium is paid by Municipal Corporation, once it is deducted from the salary of deceased, it becomes policy purchased by the deceased himself. Therefore if an amount is paid under such policy, the same cannot be equated to statutory liability under WC Act. She submitted that therefore, notwithstanding the payment of Rs. 2,75,000/-, the Appellant-Municipal Corporation is obliged under law to pay statutory compensation. She further submitted that the payment of Rs. 1,00,000/- as additional compensation is a voluntary act and it will not absolve Municipal



Corporation from statutory liability. She relied upon the judgment of the National Insurance Co. Ltd., Trichy vs. Kathamuthu Bright Industries, Trichy reported in [II L.L.J. P-143] in support of her claim.

Reasons and Conclusions.

6. It is important to note that this is an appeal under section 30 of the WC Act which requires substantial question of law involved, as provided under proviso to Section 30(1) of the WC Act. No question of law is framed when notices for final hearing was issued. Therefore let us consider if any substantial question of law is involved or not.

7. At the outset, it must be noted that this is a case where Respondents have filed an application under statutory provisions of WC Act. It is not in dispute that the deceased Dadasaheb died due to the accident arising during the course of employment. This aspect is not seriously challenged by the Appellant. Once, an employee dies due to accident arising during the course of employment, the statutory liability under Section 3 of the WC Act comes into play and the law mandates the employer to pay compensation. Section 3 of the WC Act provides for the employer's liability. Section 4 of the WC Act governs the amount of compensation. Section 4-A of the WC Act provides that compensation must be paid when due and penalty is provided in case of default.

8. The main argument of the Appellant-Corporation is that it has paid the premium for group insurance policy covering the present accident and in the list of employees for whom the policy was purchased, the name of deceased Dadasaheb specifically appears. It is therefore argued that, since the Appellant-Municipal Corporation has paid the premium and the compensation of Rs. 2,75,000/- is received from insurance company, that amount has to be adjusted towards statutory compensation payable. It is



also argued that since, an additional compensation of Rs. 1,00,000/- already paid, the total amount paid is already more than the amount directed under the impugned order. It is submitted that the total amount paid is Rs.3,75,000/- and the amount under impugned order is Rs. 3,06,180/-.

9. I have perused the impugned judgment and order. The Trial Court has considered that amount of Rs. 1,00,000/- was paid to the Respondents as special financial help. The copy of the order No. 2040 dated 22.02.2006 is considered by the Trial Court.

10. When the Trial Court passed the judgment, it was not the case of the Appellant-Municipal Corporation that premium of the group insurance policy has been paid by the Corporation (employer). In this appeal, relying upon the aforesaid order of Municipal Corporation dated 05.03.2005, the case is made out that premium amount was paid by Municipal Corporation towards premium of the group insurance policy.

11. Assuming that the Appellant Municipal Corporation paid premium, the same will not make any difference in the facts and circumstances of this case, because it has come on record that the income tax returns produced on record shows Rs. 10,992/- deducted towards the policy premium from the salary of deceased Dadasaheb. Not only that, but the last drawn pay slip of the deceased Dadasaheb at Exh. U-16 indicates that Rs. 1,043/- was deducted every month towards policy premium. It is material to note that this deduction is not towards life insurance policy but word used is only '*vima*' which means, insurance policy. If the Appellant Municipal Corporation was deducting monthly amounts towards Insurance policy from the salary of deceased Dadasaheb, it cannot be said that the Municipal corporation has paid the premium. However, this is a clear indication that the deceased Dadasaheb was paying premium towards



insurance from his own pocket and the policy benefits were purchased by him. In that view of the matter, the payment received by the Respondents of Rs. 2,75,000/- under group insurance policy cannot be traced back to any statutory provision. For the same reason, it cannot be said that, the Appellant-Municipal Corporation can be absolved of its statutory liability to pay compensation and no such adjustment can be claimed in the amount of statutory liability.

12. The Trial Court in paragraph Nos. 9, 10 and 12 of the impugned judgment has correctly considered this position. There is no explanation about this deduction of Rs.1,043 given by the Appellant-Municipal Corporation, either before the learned Commissioner or before this Court as to, for what purpose, the said deduction was applied, if not for the group insurance.

13. The Trial Court has considered the provisions of Section 3(1) and 4(1) of the WC Act to calculate the amount based on age of deceased Dadasaheb at the time of death and the amount of salary and applying relevant factor of age. Considering the figures discussed by the Trial Court in paragraph No. 15, in my view, compensation has been calculated correctly and no interference is required.

14. So far as the aspect of adjustment of Rs.1,00,000/- paid by Appellant-Municipal Corporation is concerned, since it has come on record that it is special financial help, the same cannot be connected to statutory liability. Therefore, it cannot be adjusted towards payment of statutory liability. The Trial Court has correctly considered this aspect in paragraph No. 13 of the impugned judgment.

15. The Trial Court has also considered that the Appellant-Municipal Corporation failed to pay any part of the compensation amount within one



month from the date of accident and therefore as per Section 4A(3)(a) of the WC Act, liability of interest @12% p.a. is fixed after one month of accident till realization of the amount. No fault can be found with the said finding. It is statutory requirement.

16. It is material to note that the Appellant-Municipal Corporation has not advanced any arguments about the quantum or calculation of compensation.

17. The Trial Court has considered the judgment of **Oriental Insurance Company Ltd. Vs. Srimati S. Sawant, [2002-BCR-1-382]** where the similar situation is considered and it is held that when the compensation under the said Act is under consideration and insurance was taken under the group insurance scheme, the claim is simply by virtue of group insurance policy and it is not traceable to any provisions of the said Act.

18. As far as **Associated Electrical Agencies (supra)** is concerned, the said judgment is about bar under Section 53 of the Employees' State Insurance Act, (34 of 1948) ('ESI Act' for short). Therefore, *ex-facie* the said judgment will not help the Appellant's case. The claim in the present appeal is involved under Section 3 and 4 of the WC Act being a different statute.

19. So far as the judgment of **Dhropadabai (supra)** is concerned, the Hon'ble Supreme Court was considering the applicability of bar under Section 53 of ESI Act, when an employee is an insured person under Section 2(14) of ESI Act. It was held that neither such person nor his dependents would be entitled to get compensation or damages from the employer under WC Act. In the present case, there is nothing on record to indicate that deceased Dadasaheb was an insured person under Section



2(14) of ESI Act. In that view of the matter, the facts of the present case are completely distinguishable. Hence, the said judgment will not help the Appellant-Municipal Corporation.

20. In the facts and circumstances narrated above, no substantial question of law is involved. As such, there is no merit in the appeal and same is dismissed. In view of dismissal of the appeal, nothing survives for consideration in the civil application (interim stay) and the same is also dismissed. No order as to costs.

21. If the amount of compensation deposited with the concerned Commissioner/Labour court is not withdrawn by the Respondents, the Respondents are liberty to withdraw the same along with accrued interest if any. If the Respondents have withdrawn any amount partially, they are at liberty to withdraw the remaining amount lying with concerned Commissioner/Labour court along with accrued interest immediately.

22. All concerned to act on duly authenticated or digitally signed copy of this order.

[M. M. SATHAYE, J.]