BEFORE THE COMMISSIONER FOR WORKMEN'S COMPENSATION AND JUDGE, FIRST LABOUR COURT THANE.

(PRESIDED BY: P. S. CHANDGUDE)

Application(WCA) No. 433/B-103/2014

1. Mr. Purnananda Goutam Sikha
Age : 52 years,

2. Mrs. Bimala Purnananda Sikha
Age : 50 years

Residing at : Geeta Nagar, Phase-8,
Opp. golden Next, Kashimira Road,
Dist. Thane. **... APPLICANTS**

v/s

1. M/s. NEO ITURKAA ENTERPRISES
Through its Partner
Having office Add At :
002, Chanakya, Devidayal Road,
Mulund West – Dist. Thane-400602. **...OPP.NO.1**

2. The Partner
M/s. Nil Siddhi Tower,
Plot No.4, Sector No.9E,
Kalamboli, Navi Mumbai. **...OPP.NO.2**

3. M/s. Royal Sundaram Alliance Ins.Co.Ltd.
Having its office At :
Delphi, “C” Wing, 201-204, 2nd floor,
Hiranandani Business Park,
Powai, Mumbai – 400076
Police No. LW00004050000100.
Period : 1.01.2014 to 31.12.2014. **... INSURER**

IN THE MATTER OF COMPENSATION AMOUNT.

Appearance :

1. Mrs. S.M. Tillu, Advocate for the applicants.
2. Mr. M. K. Dubey Advocate for opp.no.1.
3. Mr. Balaji Umate, Advocate for insurer.

JUDGEMENT
(Passed on 21.07.2016)

1) The application is under Section-4 of the Employee's Compensation Act,1923 for compensation of Rs.9,08,880/-. The facts of the applicant's case is as under :

2) Applicants are parents of deceased Laxman Sikha. Deceased Laxman was working with opp.no.1 as “Carpenter/Labour”. Opp.no.2 is builder by profession and he has appointed opp.no.1 to complete the work at the site. Opp.no.3 is the insurance company. Deceased Laxman Sikha was working at the site Nil Siddhi Emarate, Plot no.4, Sector-9E, Kalamboli on 21.07.2014 at about 13.45 hours he met with an accident in the course of employment and succumbed to the injuries. The applicant made repeated request to the opp.no.1,2 and insurer, but they neglected to pay the compensation. At the time of the death age of the deceased was 19 year old and he was getting salary Rs.8000/- per month therefore applicants have prayed for compensation along with interest and penalty.

3) The opp.no.1 has resisted the application by filing

written statement at Exh.C-3. It was contended that applicants are not residing within the jurisdiction of this authority and the place of incident is also not situated within the jurisdiction of authority. It was further contended that opp.no.1 has taken insurance policy which is valid for period 23.05.2014 to 22.05.2015. The opp.no.1 has also provided all safety measures to the workers. It was admitted that deceased was employed as Labour at the site of opp.no.2. He was getting salary Rs.8000/- per month. The opp.no.1 has paid compensation on humanitarian ground upto Rs.2,00,000/- it was received by brother-in-law of the deceased and son-in-law of the applicant. The applicants were resident of Orisa therefore their son-in-law Fakira Naik received it and he has also signed the voucher. As per the opp.no.1 policy No.AW/00004050000100 was valid from 1.01.2014 to 31.12.2014.

4) The insurer resisted the application by filing written statement at Exh.CA-3. It was contended that application is not maintainable, deceased was not workman as per definition of Employee's Compensation Act, there was no employer-employee relationship, the accident did not arise in the course of employment. Applicant has no privity of contract with the insurer. It was primary duty of the opp.no.1 to deposit the compensation amount with the authority. But it was admitted that the opp.no.1 was covered under the policy at the material time. It was further contended that insurer was not aware in respect of accident of deceased Laxman Sikha and his salary was Rs.8000/- per month. It was contended that no notice was received by the insurer.

5) On the rival contentions of the parties, I have framed the issues at **<u>Exh.O-1</u>** for my consideration and determination to which I have answer them as under :

ISSUES	**FINDINGS**
1. Whether the applicant prove that the deceased met with an accident on 21.07.2014 during the course of employment and while performing his duty ?	Yes.
2. What was age and salary of the deceased at the time of accident ?	Age – 20 years Salary Rs.8000/-
3. To what relief or reliefs, if any, are the applicants entitled to ?	Yes. Compensation of Rs.6,96,000/- with 12% interest of compensation amount.
4. What order ?	As per final order.

<u>R E A S O N S</u>

<u>As to issue no.1</u> :-

6) It is admitted fact that deceased was working at the construction site of the opp.no.1 and he was employed by opp.no.2. It was also admitted that he was getting salary Rs.8000/- per month. Thus, the opp.no.1 has admitted employer-employee relationship with the deceased

7) Now I have to consider that whether accident took place in the course of employment. It was also undisputed that deceased was injured on 21.07.2014 while working as a labour on the site of the opp.no.1. The certified copy of FIR having No.121/2014 reveals that deceased Laxman Sikha died on 21.07.2014 while he was working on the 13th floor of the building Nil Siddhi at Kalamboli. Therefore, the applicant has proved that deceased was succumbed to injuries in the course of employment. The insurer has challenged the employer-employee relationship, but in the light of admission of opp.no.1 in the written statement Exh.CA-3 that defence is not available to the insurer in application under Employee's Compensation Act. Therefore, I answer issue no.1 in affirmative.

<u>As to issue no.2</u> :-

8) The applicant has deposed that his son was 19 years old at the time of accident. In the cross examination he has deposed that he has not produced school leaving certificate or birth certificate of the deceased in support of the birth date of the deceased. But the applicants have produced certified copy of Election Card at sr.no.10 below Exh.U-8. On the election card date of birth of deceased Laxman Sikha is shown as 12.03.1994. The birth date shown on election card shall be valid proof in respect of birth of person unless contrary is proved. There is no evidence that the deceased has some other date of birth than what is mentioned on the election card therefore the birth date of the deceased as shown on the election card shall be considered as

valid proof of birth date. The deceased born on 12.03.1994, the accident took place on 21.07.2014 therefore he was 20 year old on the date of accident.

9) The applicant has deposed that deceased was getting Rs.8000/- per month salary from the opp.no.1, it was admitted by the opp.no.1 therefore salary of the deceased was Rs.8000/-. I answer issue no.2 salary Rs.8000/- and age 20 years.

As to issue no.3 :-

10) The applicant has proved that the accident was in the course of employment and arising out of employment. As per the Sec.4 of the Employee's Compensation Act, 50% of the salary multiplied by the age factor shall be the amount of compensation when death results from the injury. 50% of the salary of the deceased is Rs.4000/-. Age factor for year 20 is 224. Therefore, 4000 x 224 = 8,96,000/-. Therefore, the amount of compensation payable to the applicant is Rs.8,96,000/-. The opp.no.1 has not deposited compensation with the Commissioner within one month from the date of accident therefore the applicant is entitled for interest 12% p.a from the date of accident till realization on the amount of compensation.

11) The opp.no.1 has produced vouchers signed by Mr. Fakira Naik of Rs.25,000/- dtd.23.07.2014, Rs.1,00,000/- dtd.25.07.2014 and Rs.75,000/- dtd.30.07.2014. The applicant has admitted in his cross examination that Fakira Naik is his son-in-

law. He has admitted that opp.no.1 has given Rs.2,00,000/- as compensation and handed over to him to his son-in-law Fakira Naik. The money paid by the employer towards the compensation directly to the party and not deposited with the Commissioner cannot be considered, but the Ld. Advocate of the applicant at the time of the argument has argued that, that amount can be deducted from the amount of compensation and rest of the amount shall be given along with interest. Therefore the amount of compensation shall be Rs.6,96,000/- with 12% interest from one month from the date of accident till realization.

12) The opp.no.1 has given Rs.2,00,000/- to the relative of the deceased and therefore according to me, the opp.no.1 shall not be saddled with penalty.

13) The Ld. Advocate of the insurer has argued that as per the policy the opp.no.1 has to declare address of the location of every project site prior to commencement of the project. The opp.no.1 has not declared the site therefore there was breach of policy and therefore insurer is not liable. But it shall be considered that insurer has not adduced evidence and proved breach of insurance policy and therefore that defence is not tenable.

14) The Ld. Advocate of the insurer has further argued that as per Clause-2 of the conditions any interest imposed on the insured on account of his or her failure to comply with the

requirement laid down under Employee's Compensation Act shall be excluded as per the policy. The opp.no.1 has not deposited amount of compensation with Commissioner therefore the opp.no.1 is saddled with 12% interest on the amount of compensation payable. The insurer has to pay the amount of compensation along with interest and the insurer is at liberty to recover the same from the opp.no.1 by filing appropriate proceeding before proper forum. I answer issue no.3 accordingly. In result, I pass following order.

~: <u>ORDER</u> :~

1. Application is allowed.
2. The opp.no.1 and the insurer are directed to pay compensation of Rs.6,96,000/-/-(Rs. Six lac ninety six thousand only) along with 12% interest from one month from the date of accident till payment to the applicants. The insurer is at liberty to recover the interest from the opp.no.1.

Sd/

Place : Thane
Date : 21.07.2016

(P. S. CHANDGUDE)
Commissioner for Workmen's
Compensation and Judge
First Labour Court, Thane

VAM/-..1+2=4 copies