



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST.) NO.23223 OF 2024

Akashdeep Agarwal, Director Proprietor
Ashtvinayak Hospital and Anr.

... Appellants.

Versus

Smt. Tarabai Sampat Waghmare and Ors.

... Respondents.

*Mr. Pratap Sampat a/w. Ms. Bharti S.i/by Ms. Aarti Suvarna for Appellants.
Ms. Kavita Anchan for the Respondents.*

Coram : Sharmila U. Deshmukh, J.

Date : January 16, 2025

P. C. :

1. The First Appeal has been preferred under Section 30 of the Employees' Compensation Act, 1923, which provides for an Appeal against the order of Commissioner for Employees' Compensation to be filed before this Court on substantial question of law. The third proviso to Sub-Section (1) of Section 30 of the Employees' Compensation Act, 1923 [for short, "**Act of 1923**"], provides that no Appeal by an employer under Clause (a) of Sub-Section (1) of Section 30 of the Act of 1923, shall lie unless the memorandum of Appeal is accompanied by a certificate by the Commissioner to the effect that the Appellant has deposited the awarded amount payable under the order appealed against.

2. Admittedly, in the present case, the claim which has been

allowed, falls within Clause (a) of Sub-Section (1) of Section 30 of the Act of 1923. There is no certificate of the Commissioner as provided in third proviso to Sub-Section (1) of Section 30 of the Act of 1923.

3. Learned counsel appearing for the Appellants would submit that the employer does not accept the liability on the basis of fraud and therefore, is not liable to comply with the said proviso. The said fact is disputed by learned counsel appearing for the original Claimants and she would submit that by the impugned judgment, the Appellants were jointly and severally directed to pay the compensation of Rs.8,96,000/- alongwith interest at the rate of 12% and an amount of compensation at the rate of 15% by way of penalty to the Claimants. She submits that in part compliance of Clause (3) of the operative part of the order, 50% of compensation by way of penalty is deposited, however, Clause (2) of the operative order has not been complied with.

4. Perusal of the statutory provision does not indicate any discretion is vested in this Court to admit the Appeal without a certificate by the Commissioner, as provided in third proviso to Section 30(1) of the Act of 1923. At this stage, there is no Interim Application filed by the Appellants in order to seek waiver of the said statutory provision as far as the certificate of the Commissioner is concerned.

5. It is open for the Appellants to take out an appropriate application in that regard. As of today, the First Appeal cannot be considered without an appropriate certificate in that behalf.

[Sharmila U. Deshmukh, J.]