IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 7743 OF 2015
WITH
CIVIL APPLICATION NO.7744 OF 2015
IN / WITH
FIRST APPEAL (STAMP) NO. 9394 OF 2015

Future Generali India Insurance Co. Ltd.
Corporate Office, Indiabulls Finance Center,
Tower 3, 6th Floor, Senapati Bapat Marg,
Elphinstone (w), Mumbai – 400013.
Branch Office at 2nd floor, Pagariya Tower,
Dr. Rajendra Prasad Road, Aurangabad. ...Appellant

versus

1. Jaggnath S/o Sakharam Jadhav,
Age : 52 Years, Occu. : Labour,
R/o Karodi, Tq. & Dist. Aurangabad

2. Smt. Jaibai W/o Jagganath Jadhav,
Age : 47 Years, Occu. : Housewife,
R/o As above.

3. Santosh S/o Kachru Thorat,
Age : Major, Occu. : Business,
R/o Bmbegaon Asegaon,
Tq. Gangapur, Dist. Aurangabad. ...Respondents

.....
Mr. D. S. Kulkarni , Advocate for applicant/appellant
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CORAM : N.W. SAMBRE, J.

DATE : 10th AUGUST, 2015

ORAL ORDER :

Heard.

2. For the reasons stated in the application, delay caused

in preferring the first appeal stands condoned. Civil Application is allowed.

3. The appeal is taken out for final disposal at admission stage.

4. Mr. Kulkarni, learned Counsel for the Insurance Company, non-applicant No. 2 to the claim petition would urge that in view of breach of policy conditions, the Workmen's Compensation Commissioner, Aurangabad was not right in awarding the claim. So as to substantiate his contention, he has relied upon terms of the policy i.e. clause-IMT 28(3), which according to him, mandates the vehicle owner to maintain record of the employees, such as driver, conductor, cleaner, labour etc., who are employed on the vehicle which is insured. According to him, since the owner of vehicle has not discharged its burden, the insurance company was right in canvassing that there was breach of policy conditions.

5. Upon analysis of the said submission and having perused the award delivered by the Workmen's Compensation Commissioner, it is noted that the accident in question is not in dispute. What is disputed by the owner about the employer and employee relationship. The evidence is brought on record that the

deceased was employed on the vehicle in question for loading and unloading of marble stones. Once the said evidence is brought on record, the burden shifts on the present appellant to prove that the deceased Yogesh was not employe and is not covered under the policy.

6. The appellant insurance company has examined one Umakant DW-1 so as to establish the fact about breach of policy conditions. The Commissioner then proceeded to appreciate the evidence of the said witness and has observed that the said witness Umakant has failed to establish the breach of policy conditions, particularly in the back ground of stand taken by the appellant. The Commissioner noted that though the said witness has made statement during course of recording of evidence as regards status of the deceased. The said witness/insurance investigator has relied upon the statement recorded, which were neither produced nor the person whose statement was recorded was examined. In view of the burden on the present appellant so as to establish that the deceased Yogesh was not employee of the respondent was not established.

7. It is admitted position on record that the insurance company has received additional premium of Rs.25/- so as to cover the risk of the employee. Once it is noted that the appellant

insurance company has not discharged its burden, the Commissioner, in my opinion, was right in awarding compensation and fastening liability on the present appellant.

8. As such, no illegality or infirmity could not noticed. The appeal lacks, same stands dismissed. Consequently, civil application for stay stands disposed of.

[**N.W. SAMBRE, J.]**

Tupe/10.08.15