IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 2571 OF 2013

Life Insurance Corporation of India **....Appellant.**

Versus

Bhausaheb Manjabapur Khedekar
and Ors. **....Respondents.**

Mr. A.D. Kasliwal, Advocate for appellant.

Mr. P.V. Barde, Advocate for respondent No. 1.

CORAM : T.V. NALAWADE, J.
DATED : 14th July, 2015.

ORDER :

1. The appeal is filed against judgment and order of Application (WCA) No. 87/2011 which was pending before Labour Court, Ahmednagar (Commissioner appointed under the Workmen's Compensation Act). In the proceeding filed by present respondent No. 1 for compensation in respect of injuries sustained by him during the course of employment, the compensation of Rs. 92,849/- is awarded and the interest at the rate of 12% p.a. is granted, if the employer and Insurance Company failed to deposit the amount of compensation within 30 days from the date of decision i.e. from 7.9.2012.

2. The learned counsel for Insurance Company argued

mainly on the terms and conditions of the policy. He submitted that following question of law needs to be formulated and on this point, the appeal needs to be admitted and decided, which is as under :-

> "Whether in the facts and circumstances of the case, Labour Court is justified in ignoring the terms of the policies which does indicate that so as to avail the disablement benefit the income of the injured must ceased or come to an end and in the instant matter admittedly the respondent No. 1 working with the opponent No. 2 an 3, therefore, can it be said that the Labour Court is justified in awarding the compensation against the present appellant ?"

3. It is the case of respondent/original claimant that he was working with respondent No. 2 - Reliance Automotive India Limited and respondent No. 2 was making payment of salary to him. He started working there in the year 1993 and according to him, in incident dated 20.9.1988 at about 9.00 a.m., when he was working in the campus of respondent No. 2, he sustained injuries to right hand and during treatment, his right hand was required to be amputated from the above portion of wrist. He has contended that he was asking the employer to give

compensation, but they avoided to make payment under one or other pretext. He has contended that as he had apprehension that the employer may remove him from service, he did not take any action and did not file proceeding immediately for getting the compensation.

4. It is his case that respondent No. 2 closed the business in the year 1994. It is his case that he was getting Rs. 2100/- per month at the relevant time as the wages. It is his case that he approached the Court as nothing is paid to him by way of compensation by respondents. As the business was also closed, he lost employment also. He had claimed compensation of Rs. 1,83,000/- and also the penalty of 50%.

5. Respondent No. 2, employer contested the matter. Respondent No. 2 contended that application was filed after about 10 years of the date of incident and so, it is not tenable. Alternatively, he contended that the employer had purchased accident policy bearing No. 56132449 from L.I.C., present appellant and the policy was valid on the date of the incident. The employer contended that under the policy, the Insurance Company is bound to indemnify him. It was also specifically contended that the fact of insurance was within the knowledge

of Insurance Company and it was liable to pay the compensation. The other contentions made by the claimant were not seriously disputed by the employer.

6. The Insurance Company filed written statement to contest the matter. The Insurance Company has contended that there was no cause of action for filing the proceeding. It is contended that the policies were time barred and so, nothing can be recovered from the Corporation. It was also contended alternatively that there was no employee-employer relationship between the claimant and respondent Nos. 1 and 2. It was denied that the claimant has sustained injuries in the aforesaid incident. It was contended that due to the huge delay of 10 years, no relief can be given to the claimant.

7. Insurance Company gave particulars of the two policies and the dates of policies and the dates of maturity were also given. There were two policies purchased by the employer and they covered the date of incident. The dates of maturity are 2028 and 2026. It was contended by Insurance Company that after the incident, it was necessary for the employer or the insurer to communicate to Insurance Company and make the claim. It is contended that under the policy, compensation can

be given only if the injuries mentioned in the policy are sustained.

8. Before the Commissioner, the claimant examined himself, policies were placed on the record and the disability certificate was produced on the record. The employer did not dispute the relationship. It is brought on the record that the claimant was operating one machine at the relevant time and the injuries were sustained during the course of employment. The Commissioner has held that the monthly salary was Rs. 850/- and this amount was admitted by the employer. The Commissioner has condoned the delay in view of the peculiar circumstances of the case. Employer had not informed the Insurance Company and there is the contention of the employee of the aforesaid nature. In view of the record and disability, the Commissioner has held that due to the loss of limb and nature of work, which the claimant was doing, it needs to be presumed that there is 100% loss of earning capacity. The percentage of the disability is mentioned as 70% and the Commissioner has held that the injuries were scheduled injuries. It appears that the Insurance Company was added subsequently to the proceeding and only after production of true policies by employer. Thus, there was no reason for the original claimant to know that there

was insurance about such accident.

9. In view of the nature of challenge for the decision, it is sufficient if policies are perused and the record of disability is seen. The disability covered under clause 10 of the policy is as under :-

> "**10. Accident Benefit :-** If at any time when this policy is in force for the full sum assured, the Life Assured, before the expiry of the period for which the premium is payable or before the policy anniversary on which the age nearer birthday of the Life Assured is 65, whichever is earlier, is involved in an accident resulting in either permanent disability as hereinafter defined or death and the same is proved to the satisfaction of the Corporation, the Corporation agrees in the case of :
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> **(a) Disability to the Life Assured :** (i) to pay in monthly instalments sparead over 10 years an additional sum equal to the Sum Assured under this policy. If the policy becomes a claim before the expiry of the said period of 10 years, the disability benefit installments which have not fallen due will be paid along with the claim; (ii) to waive the payment of future premiums.
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> The maximum age limit of assurance under all policies on the same life to which benefits (i) and (ii) above apply shall not in any event exceed

Rs. 1,00,000. If, there be more policies than one and if the total assurance exceeds Rs. 1,00,000, the benefits shall apply to the first Rs. 1,00,000 .... in order of dates of the policies issued.

The waiver of premiums shall extinguish all options under this policy except as to such assurance, if any, as exceeds the maximum aggregate limit of Rs.1,00,000 and which may have been kept in force by continued payment of premiums and benefits covered by (b) of this clause.

The disability above referred to must be disability which is the result of an accident and must be total and permanent and such that there is neither then nor at any time thereafter any work, occupation or profession that the Life Assured can ever sufficiently do or follow to earn or obtain any wages, compensation or profit. Accidental injuries which independently of all other causes and within ninety days from the happening of such accident, result in the irrecoverable loss of the entire sight of both eyes or in the amputation of both hands at or above the wrists or in the amputation of both feet at or above ankles, or in the amputation of one hand at or above the wrist and one foot at or above the ankle, shall also be deemed to constitute such disability.

Immediately after the happening of the disability, full particulars thereof must be given in writing to the office of the Corporation where this policy is serviced together with then address and whereabouts of the Life Assured and within ninety days after the happening of the disability there must be given serving Branch Office of the Corporation in the manner required by it, proof of disability satisfactory to the Corporation and without any expense to the Corporation, and thereafter similar proof must be given as and when required by the Corporation, of the continuance of such disability. Any Medical Examiner nominated by the Corporation shall be allowed to examine the person of the Life Assured in respect of any disability claim, in such manner and at such times before and/or after the disability is accepted by the Corporation as the Corporation may require.

In the event of its being discovered at any time that a claim under this clause has been wrongly admitted, all premiums falling due after the date of the Corporation's intimation to that effect shall be paid and no further installments of the additional sum assured shall be paid as if no disability had occurred.

(b) Death of the Life Assured :............"

10. The disability shows that the claimant lost his right hand from wrist. He was operating machine and it can be said that due to loss of the right hand at wrist, he cannot operate the

machine. In any case, there is nothing in rebuttal from other side on this point. Though the claimant was again reappointed and continued as employee, but it is not the case of employer that he was working on the machine. The circumstance that the claimant did not take steps against employer and continued to do some work is sufficient to infer that this poor employee had no other option. The injury was such that it took away the capacity of the claimant to do the skilled work. So, this Court holds that there is no possibility of interference in the order made by the Commissioner and no substantial question of law as such is involved.

11. In the result, the appeal is dismissed. The learned counsel for Insurance Company requested for stay to the order as he wants to challenge the decision. The stay is refused. The amount which is already deposited as compensation is to be paid to the claimant.

[T.V. NALAWADE, J.]

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