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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**FIRST APPEAL ST.NO.6392/2015
WITH
CIVIL APPLICATIONS NOS.3025/2015
AND 3026/2015**

M/s Shriram General Insurance
Company Ltd.

...Appellant..

Versus

Rakesh alias Golusing Ramlot
Choudhary & another.

...Respondents...

.....

Shri Mohit R. Deshmukh, Advocate h/f Shri S.G.
Chapalgaonkar, Advocate for appellant.

.....

CORAM: M.T. JOSHI, J.

DATE: 05.03.2015

ORDER :

- 1] Heard learned counsel for the appellant / applicant.
- 2] For the reasons stated in the Civil Application No.3025/2015, delay of 73 days in filing the appeal is hereby condoned. Hence, the civil application for condonation of delay is disposed of.
- 3] Aggrieved by the direction to pay compensation in a

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proceeding u/s 4 of the Workmen's Compensation Act, present appeal is preferred by the insurer.

4] Respondent no.1 Rakesh @ Golusing was injured in the motor vehicle accident that has occurred on 10.4.2012 near village Banpimpla in Gangakhed Tahsil Dist.Parbhani. Two trucks were involved in the accident. According to respondent no.1 – Rakesh, he was working as a Cleaner over the Tanker bearing No.MH-04-AL-2183. Respondent no.2 – Sanjay, the owner of the Tanker, was his employer and the said Tanker was insured with the present appellant. In the circumstances, he claimed compensation.

5] Respondent no.2 herein – Sanjay as well as present appellant i.e. original respondent no.2, denied that the claimant was employed over the Tanker. The learned Commissioner, however, concluded that there was employer – employee relationship between the respondent no.1 and the respondent no.1 and eventually the present appellant i.e. the insurer was directed to pay compensation of Rs.7,50,000/- by considering the injuries and permanent disability received by the respondent no.1.

6] Learned counsel for the appellant submits that when

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the owner of the Tanker himself has denied the relationship, there was no reason for the Commissioner to arrive at a conclusion that there was such a relationship of employer – employee existing between these parties. In the circumstances, he submitted that as patent error has been committed by the learned Commissioner, the appeal be admitted.

7] I have gone through the findings of the learned Commissioner as also copy of the FIR filed by one Baldevsing Deval, the owner of the Truck bearing No.MH-04-BG-3825 i.e. another Truck involved in the accident. The said FIR was filed immediately after the accident. In the said FIR, it has been recited that the Cleaner working over another Truck i.e. present respondent no.1 was injured in the accident. The learned Commissioner had taken into consideration the recitals of the immediate FIR (Exh.27) to come to the conclusion that the employer – employee relationship existed between the present respondents.

8] Though the ground is raised by the appellant that whether recitals in the FIR can be considered, it should be noted that all the material on record has to be

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considered by the Court to arrive at a conclusion and as the recitals in the FIR corroborate the case of the respondent no.1 that he was working as a Cleaner over the said Truck, no substantive question of law in this regard has arisen.

9] I do not find that any patent error is committed by the learned Commission. No substantive question of law is involved. The appeal is, therefore, rejected. No order as to costs. In view of this, Civil Application No.3026/2015 for stay does not survive and disposed of as such.

(M.T. JOSHI, J.)