IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2958 OF 2013
WITH CA/5014/2013 IN FA/2958/2013 WITH CA/7461/2015 IN FA/2958/2013

M/S.THE ORIENTAL INSURANCE CO, LTD.
VERSUS
SAANTOSH BABSAHEB SUMBE AND ANOTHER
...
Advocate for Appellant : Mr. Vinayak Narayan Upadhye
Advocate for respondent No.1 : Mrs. M.D. Thube-Mhase
Advocate for respondent No.2 : Mr. P.V. Barde.

CORAM : N.W. SAMBRE,J.
DATE : 31st JULY, 2015.

PER COURT:

1] Heard.

2] The present appeal under Section 30 is filed by the Insurance Company questioning the award delivered by the Commissioner of Workmen's Compensation on 5th November, 2012.

3] The claimants alleged that one Santosh Sumbe (respondent No.1) who was employed with the present respondent No.2 met with an accident on 18.1.2010, who was insured with the present appellant as an employee through respondent No.2. The Commissioner awarded compensation of Rs. 5,40,528/- by taking into account the monthly income of the claimant @ Rs. 4000/- p.m. who was working as labourer with respondent No.2.

4] The award is questioned by the appellant Insurance Company on the ground that the monthly income of the claimant was not established and there was restricted liability covered under the Insurance Policy.

5] The above referred contention of Shri Upadhye, are opposed by the learned counsel for the respondents and they have supported the award delivered by the Commissioner.

6] Upon perusal of considerations before the Workmen's Compensation Commissioner, it is required to be noted that the appellants have filed their written statement, and in para.3 thereof, as averred as under :-

> “ It is submitted that as per terms and conditions of the policy issued by this opponent in favour of opponent No.1 it is the risk of 10 employees having wages less than Rs. 4000/- per month was covererd. It is admitted that even as per the averments in the ptition the applicant was having salary of Rs. 6000/-0 p.m. Hence, he is not a person who was insured under the policy issued by this opponent No.1 and hence this opponent will not be liable to pay any amount of compensation to the applicant.”

7] Once it is admitted position on record that the liability to the extent of Rs. 4,000/- p.m. of the employees who are insured with the appellants are covered, it will not be open for the present appellants to submit that their liability was restricted only to the extent of Rs. 3,000/- p.m. In my opinion, the Commissioner has given appropriate consideration to the said aspect of the matter and awarded compensation by taking into consideration the maximum monthly income of the claimant @ Rs. 4000/- p.m. The award of compensation, as such, is based on cogent evidence and the material that was brought before the Commissioner for Workmen's Compensation.

8] In view of the admitted fact that respondent No.2 was insured with the appellant to the extent of 10 Labours working under him and the fact that the accident took place on 18.1.2010 is not disputed, in my opinion, the award delivered by the Commissioner for Workmen's' compensation does not call for any interference, The appeal therefore, stands dismissed. Liberty to the respondents to apply for withdrawal before the competent authority. In view of that, Civil application No. 7461 of 2015 stands disposed of.

[N.W. SAMBRE]
JUDGE.

grt/-