

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

...

13 FIRST APPEAL NO. 1344 OF 2012

ICICI LOMBARD GENERAL INSURANCE CO. LTD.
VERSUS
VISHNU BABURAO GOLHAR AND ORS

...

Advocate for Appellant : Mr. S. G. Chapalgaonkar
Advocate for Respondents 1 and 2 : Mr. D. R. markad
Advocate for Respondent No.3 : Mr. V.A.Dhakne

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 5th October, 2015

PER COURT :

1. The claimants/ present respondents 1 and 2 had filed application for compensation under the provisions of Workmen's Compensation Act. The same is allowed. The original opponents 1 and 2, are made jointly and severally liable to pay compensation amount. The Appellant Insurance Company has assailed the said order in the present appeal.

2. Mr. Chapalgaonkar, the learned counsel for the appellant submits that the insurance company could not have been made liable as the driver of the vehicle was not holding valid licence. According to the learned counsel, learned single Judge of this Court, in such

circumstance, has held that Insurance company is required to be exonerated in case of breach of policy. He relies on the judgment in the case of **National Insurance Co. Ltd. Vs. Maruti**, reported in **ACJ-2012-0-1635**.

3. Mr. Dhakne, the learned counsel for respondent No.3/employer submits that proper opportunity was not given to the respondent No.3. The Commissioner for Workmen's Compensation has rightly considered the joint and several liability.

4. I have also heard Mr. Markad, the learned counsel for the claimants.

5. The Commissioner for Workmen's Compensation has held that driver was not holding valid licence. Considering the said aspect and the judgment of the learned single Judge of this Court in case of **National Insurance Co. Ltd.** referred supra, pay and recover order can be passed.

6. In the light of that, the operative order of the Commissioner for Workmen's Compensation impugned

in the present appeal is modified to the extent that the original opponent No.1 employer/owner is liable to pay compensation amount.

7. The original opponent No.2 -Insurance company shall pay the compensation amount as determined by the Commissioner for Workmen's Compensation and recover the same from the employer/owner.

8. Rest of the order passed by the Commissioner is confirmed.

9. The first appeal is accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC