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

FIRST APPEAL NO. 1484 OF 2012
WITH
CIVIL APPLICATION NO. 9655 OF 2012

Bajaj Allianz General Insurance Co. Ltd. **....Appellant.**

Versus

Vishwanath s/o. Tukaram Sarvade & Anr. **....Respondents.**

Mr. Mohit Deshmukh h/f. Mr. S.G. Chapalgaonkar, Advocate for appellant.
Mr. D.N. Gilche & Mr. M.B. Sandanshiv, Advocate for respondent No. 1.

CORAM : T.V. NALAWADE, J.
DATED : 3rd July, 2015.

ORDER :

1. The appeal is filed to challenge the judgment and order of Commissioner appointed under the Workmen's Compensation Act (Judge, Labour Court, Latur), delivered in W.C.A. No. 246/2009. Both the sides are heard.

2. The proceeding was filed by present respondent No. 1 for compensation in respect of injuries sustained by him in motor vehicle accident. It is his case that he was working as a Labour with the present respondent No. 2 and he sustained injuries in the accident. The Insurance Company was also made party to the proceeding. But the Commissioner has held that

Insurance Company is not liable to pay the compensation and it cannot be asked to indemnify insured.

3. It is the case of respondent/original claimant that he was working as a labour on tipper vehicle bearing No. MH-43/E-3448 and when he was travelling with the vehicle as a labour, the accident took place and he sustained grievous injuries. It is his case that due to injuries, he was permanently disabled and he cannot work as a labour. He had contended that he was paid Rs. 4000/- per month as wages by the present respondent No. 2 and so, he is entitled to compensation of Rs. 3,94,120/-. The age of the claimant was given as 35 years at the relevant time.

4. The present petitioner, Insurance Company contested the proceeding by filing written statement. Insurance Company denied everything including the contention that the original claimant was employed with present respondent No. 2. Insurance Company denied that it was an accident. The Insurance Company also denied that he was getting wages as contended by him. Other routine defences were taken that the driver was not holding valid and effective driving licence.

5. Before the Commissioner, the claimant examined

himself and he examined the doctor, who has issued disability certificate. No evidence in rebuttal was given. The order of the Commissioner shows that during trial, the parties did not seriously dispute that there was an accident, the claimant was injured in the accident and the vehicle owned by the present respondent No. 2 was involved in the accident. The fact of insurance was also not disputed by the Insurance Company. It was not disputed that there was cover of insurance to the labour travelling in the tipper.

6. The present proceeding is filed to challenge the decision of the Commissioner on many grounds and the grounds which were not taken before the Commissioner were also argued. This Court is required to see as to whether any substantial question of law is involved.

7. It was submitted that initially some record was created by police to show that another person was on driver's seat at the relevant time, but subsequently chargesheet was filed against different person and an attempt was made to see that the case is filed against the person, who was holding valid and effective driving licence at the relevant time. As no evidence was given and no issue was raised, there is no need to consider

and discuss this issue in this proceeding.

8. The learned counsel for Insurance Company then argued that the evidence of the doctor shows that disability certificate was given on the basis of two injuries noted by him like fracture of pelvis on left side and fracture of ribs on left side. The doctor has admitted that he noticed that there was injury to pelvis left only. It was submitted that in view of the evidence of the doctor, it needs to be presumed that the permanent disability was to the extent of 45.5% only and not to the extent of 51.5% as mentioned in the certificate. It was submitted that doctor has admitted that the claimant can do some light work. The evidence of the doctor shows that opinion is given that claimant cannot do hard labour work efficiently due to injury though he can do some light work. The claimant was examined six months after the date of accident and so, the submission made by the learned counsel for Insurance Company that possibility of recovery ought to have been considered is not acceptable. The Commissioner has presumed that the physical disability is to the extent of 46.5% and the Commissioner has inferred that there is loss of earning capacity to the extent of 70%. The Commissioner has held that his monthly income was Rs.3,000/- and accordingly, the compensation is calculated

which is Rs. 2,48,295/-. As there was fracture to pelvis and claimant was doing hard work in the past and there is opinion of aforesaid nature, this Court holds that the Commissioner has not committed any error in using his powers. No substantial question of law as such is involved.

9. In the result, the the appeal stands dismissed. In view of dismissal of appeal, civil application filed for stay is also disposed of.

[T.V. NALAWADE, J.]

ssc/