

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**FIRST APPEAL NO. 227 OF 2013
WITH CA/10095/2012 IN FA/227/2013**

**THE RELIANCE GENERAL INSURANCE CO. THR MANAGER
VERSUS
SHAIKH RASID RASULSAB AND ORS**

...
Advocate for Appellant : Mr. Chapalgaonkar S. G
Advocate for Respondents : Mr. A. S. Mantri

...
CORAM : S. V. GANGAPURWALA, J.

DATE : 1st September, 2015

PER COURT :

1. Present respondent no.1 had filed application for compensation before the Commissioner for Workmen's Compensation on account of injury sustained by him in an accident. The said application is allowed. Aggrieved thereby, the insurance company has filed the present appeal.

2. Mr. Chapalgaonkar, the learned counsel for the appellant strenuously contends that the respondent was passenger travelling in the goods vehicle. It is a case of breach of policy. As such, the insurance company cannot be held liable to pay compensation amount. Learned counsel submits that even police papers would show that respondent no.1 was passenger in goods vehicle. The statement has been recorded of a co-passenger who has categorically stated that the respondent No.1 was co-passenger. Such an evidence could not have been discarded. Learned counsel submits that merely because respondent No.2 admitted the case pleaded by respondent no.1, that would not ipso facto be sufficient to hold

that respondent no.1 was a cleaner on the said vehicle, employed by respondent no.2. The Commissioner has failed to consider this aspect in its correct perspective. Totality of the evidence, documentary as well as oral, ought to have been considered. The learned counsel further submits that the disability certificate is to the extent of 40.26 % however, while awarding compensation, the commissioner has considered 100% loss of earning capacity and awarded compensation which is illegal. Even the Doctor has said that the respondent No.1 can do the other light work. Even the said doctor examined did not treat the respondent no.1. Considering the said fact also, the disability certificate is not proved. The compensation has not been properly computed vis a vis the disability of the respondent no.1.

3. This being an appeal under the provisions of the Workmen's Compensation Act, can only be entertained on substantial questions of law. The Commissioner for Workmen's Compensation has appreciated the evidence. The Commissioner has discarded the statement of another person i.e. Mohd. Rafique on the ground that the said statement is of a third person. The pleadings and the evidence on record before the Commissioner is that respondent no.1 was cleaner employed by respondent no.2 on his vehicle. Respondent no.2 has admitted the said fact. Respondent no.2 could also have been liable to fasten the penalty amount. The commissioner has evaluated the said evidence and arrived at the plausible conclusion. The same would not give rise to a substantial

question of law.

4. While considering the disability, the Commissioner has to consider the functional disability, whether the said person would be in position to do the work which he was doing at the time of accident. For the said purpose, the evidence of the Doctor has been considered. The disability certificate is a matter of evidence on record. Even evidence has been led wherein it is stated that respondent no.1 would not be in a position to do the work of cleaner henceforth. However, he would only be in position to do some light work. Functional disability, as such, would be 100%.

5. Considering the above, no substantial question of law arises. The appeal is dismissed, however, with no order as to costs. Civil application also stands disposed of.

(S. V. GANGAPURWALA, J.)

JPC