

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.2764 OF 2011

ICICI LOMBARD GENERAL INSURANCE
COMPANY LIMITED
Adalat Road, Aurangabad
Through its Legal Manager
Mr.Rahul S Sanap.

.. APPELLANT
[Orig.Resp. No.2.]

Versus

1] Satish Ramgopal Bajaj
Age 25 years, Occu-Nil
R/o Selu Tq. Ausa,Dist.Latur

2] Balaprasad S/o Ramgopal Bajaj
Age major years, Occ-Business
R/o Selu Tq. Ausa,Dist.Latur

.. RESPONDENTS
[No.1 Orig.Claimants]

...

Shri S.S.Patil,Adv. for appellant
Shri R.P.Adgaonkar, Adv.for respondent No.1

...

CORAM : S.V.GANGAPURWALA,J.

DATED : 21ST SEPTEMBER, 2015

ORAL ORDER :-

The present respondent no.1 had filed application for compensation under the provisions of the Workmen's Compensation Act. The same is partly allowed. Aggrieved thereby, the present

Appeal.

2] Mr.Patil, learned counsel for the appellant submits that the contents of the FIR which is also relied by the claimant are not at all considered by the Commissioner. The learned counsel submits that the FIR is filed by the real brother of the claimant who was travelling alongwith claimant in the said vehicle. The FIR specifically states that the present appellant, the informant and the present respondent no.1 constitute a joint family and they reside as a joint family.

On the fateful day, claimant and the informant who is real brother of the claimant were going for the purchase of the Kirana articles for the purpose of their shop. According to the learned counsel, said aspect has been ignored only on the ground that the informant is not the respondent no.1 or the claimant. According to the learned counsel, respondent no.1 has also not stepped into witness box so that the present appellant would have opportunity to cross examine veracity of these pleadings. According to the learned counsel, the contents of the FIR are also relevant. The claimant himself has admitted the FIR as such now cannot be permitted to raise the defence that the contents of the document are not proved. The learned counsel relies on the judgment of the Apex Court in the case of **Oriental Insurance Co.Ltd. V/s Premlata Shukla and others reported in III (2007) ACC 54 (SC)**; so also another judgment of the Apex Court in the case of **Gottumukkala Appala Narasimha Raju and others V/s National Insurance Co. Ltd. And another reported in II (2007) ACC 880 (SC)**. The learned counsel submits that the factum of the claimant being in employment of his real brother has not been proved by direct independent evidence. No document is also produced on record nor respondent no.1 has stepped into witness box.

3] Mr.Adgaonkar, learned counsel for respondent no.1 submits that this being the appeal under the provisions of the Workmen's Compensation Act, can only be considered on substantial questions of law. The Commissioner on appreciation of evidence has come to a plausible conclusion that the respondent no.1 has admitted the factum of the present claimant to be under his employment . The FIR is lodged by third brother which is not binding on the present claimant. The learned counsel relied on the judgment of the Apex Court in the case of **T.S.Shylaja V/s Oriental Insurance Co. and another reported in I(2014) ACC 132.**

4] With the assistance of learned counsel, I have gone through the order. There cannot be any dispute over the proposition that an Appeal under the provisions of the Workmen's Compensation Act can only be considered on substantial questions of law.

5] The appreciation of evidence has to be based on sound legal principles. If a particular evidence which is required to be considered and is ignored or is erroneously discarded then it would be a case of substantial question of law. In the present case, following substantial questions of law arise for consideration.

[I] Whether the evidence in the shape of FIR has been wrongly discarded ?

[II] In view of the FIR, the claimant has discharged burden of proving that he is in employment of respondent no.1 ?

6] In the present case, the factum of the claimant to be in

employment of respondent no.1 will have to be proved by preponderance of probabilities. The FIR is not disputed by the claimant which is lodged by the third real brother of the claimant. The contents of the said FIR will also have to be read and Court will have to arrive at a conclusion. No doubt, the claimant has every right to adduce evidence to prove that he is in employment of respondent no.1 though respondent no.1 is his real brother. However, the standard of proof will have to be more. More particularly in light of the FIR filed by his other real brother and more particularly when the contents of the FIR are contrary. Mr.Adgaonkar, learned counsel at this stage submits that the claimant be given opportunity to adduce further evidence.

7] Considering the fact that it is a case under beneficial litigation, I am inclined to grant one opportunity to the claimant to adduce evidence.

8] In light of above, I pass following order :

The impugned order is quashed and set aside. The parties are relegated before the Commissioner for Workmen's Compensation Act and Judge, Labour Court, Latur, for deciding the application W.C.A.No.235/2009 afresh. The parties are at liberty to adduce further evidence. The parties shall appear before the Commissioner, Workmen's Compensation on **15th October, 2015**. The record and proceedings be sent back immediately. In case present respondent no.2-orig Opponent no.1 does not appear before the Commissioner, on the said date, then the Commissioner may issue notice to the said respondent. Considering the fact that the matter

is relegated, the Commissioner shall decide the application expeditiously preferably within one year.

[S.V.GANGAPURWALA,J.]

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