IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No.2778 of 2013

* Ashok Mahadeo Bansode,
Age 33 years,
Occupation : Nil,
R/o. At Post Pachegaon,
Taluka Georai, District Beed. **.. Appellant.**

Versus

1) Udhav Laxman Pawar,
Age Major,
Occupation: Business,
R/o. At Pot Pendgaon,
Taluka and District Beed.

2) Shriram General Insurance
Company Ltd.,
E/8, RICO Industrial Area Ltd.
Sitapur, Jaipur (Rajasthan),
Through Branch Manager,
Shriram General Insurance
Company Ltd.,
Office no.7 & 8, First Floor,
In front of S.F.S. School,
Akashwani, Jalna Road,
Aurangabad. **.. Respondents.**

Shri. K.J. Suryawanshi, Advocate, for appellant.

Shri. V.N. Upadhye, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 14th JULY 2015

JUDGMENT:

1) On 16-7-2014 both the sides agreed to argue the appeal for final disposal at admission stage. After that the matter came to be adjourned from time to time. Today, learned counsel for the original claimant, appellant and the learned counsel for the Insurance Company remained present and they argued the matter.

2) The appeal is filed to challenge the judgment and order of the Commissioner appointed under the Workmen's Compensation Act (Civil Judge, Senior Division, Beed worked as Commissioner) delivered in WC Application No.36/2011. Present appellant had claimed compensation in respect of injuries sustained by him in motor vehicle accident. It is his case that he was appointed as a driver on the vehicle involved in the accident and at the relevant time the other driver named Angad drove the vehicle rashly and negligently and caused the accident. Due to injuries sustained in the accident one hand from ankle was required to be amputated. Criminal case was filed by police against Angad out of this accident.

3) In the application filed before the Commissioner the claimant had claimed compensation in respect of injuries and also reimbursement in respect of the amount spent by him. The employer Udhav Pawar appeared in the proceeding and he admitted the fact of accident and also the contention that the claimant was working as driver of his vehicle. The Insurance Company denied everything.

4) The Commissioner has rejected the application by observing that the relationship of employer and employee was not established by the applicant. The compensation amount is not calculated as per procedure given by the Commissioner.

5) In view of the aforesaid nature of the defence taken by the employer, this Court holds that the substantial questions of law involved are as follows :

(i) Whether the Commissioner has committed error in not considering the admissions given by the employer in the written statement in which the relationship of employer – employee is admitted ? And,

(ii) Whether the Commissioner has committed error in not calculating the compensation which needs to be awarded to the claimant under the Workmen's Compensation Act ?

6) In view of the material available, this Court holds that the Commissioner has committed aforesaid errors. As this Court will be required to determine the compensation eve if it is held that relationship of employer employee is proved by the applicant, this Court holds that the matter needs to be remanded back to the Commissioner for reconsideration.

7) In the result, the appeal is allowed. The judgment and order of the Commissioner delivered in the aforesaid matter is hereby set aside and the matter is remanded back to the Commissioner for fresh hearing. Parties are to appear before the Commissioner on 19th August 2015.

Sd/-
(T.V. NALAWADE, J.)

rsl