

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.239 OF 2014

The New India Assurance Co. Ltd,
Through its Divisional Manager,
D.O. No.I, Adalat Road, Aurangabad,
Shri Sanjiv Ramrao Gaisamudre,
Age : 52 years, Occu. Service,
R/o Aurangabad

..APPELLANT
(Orig. Respondent No.1)

VERSUS

1. Bhagwan s/o Ramnath Shinde,
Age : 38 years, Occu. Driver,
R/o Hivarkheda (Gautala),
Tq. Kannad, Dist. Aurangabad

..RESPONDENT
(Orig. Claimant)

2. Shaikh Ramzan s/o Shaikh Chand,
Age : 50 years, Occu. Business,
R/o Tilaknagar Kannad,
Tq. Kannad, Dist. Aurangabad

..RESPONDENT
(Orig. R-2)

Mr M.M. Ambhore, Advocate for applicant;
Mr R.V. Gore, Advocate for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 27th April, 2015

ORAL ORDER :

With the consent of the parties, the appeal is taken up for final disposal.

2. This Appeal is directed against the judgment and award dated 9th May, 2013, rendered by the Commissioner for Compensation and Judge, Labour Court, Aurangabad, in W.C. Application No.16 of 2008.

3. Learned Counsel appearing on behalf of the appellant – insurance company, while trying to make out an argument for remand of the matter, has urged two fold grounds, namely, (i) proper opportunity of hearing was not given to the appellant as it was not in a position to file written statement and (ii) that in absence of employer-employee relationship between the respondent no.1 - claimant and respondent no.2 – vehicle owner and the fact that the Driver was not holding valid driving licence, the the Commissioner for Compensation and Judge, Labour Court, ought not to have granted the compensation.

4. The above referred submissions are resisted by the learned Counsel appearing on behalf of respondent no.1 – claimant, on the ground that the appellant has not filed written statement to the W.C. Application intentionally, though sufficient opportunity was given. Apart from that, he would urge that the degree of disability and the loss of earning capacity was discussed, based on the evidence of Dr. P.S. Jaiswal, who has certified the disability. As such, according to him, the appeal deserves to be dismissed.

5. At the outset, it is required to be noted, upon analyzing the case of the appellant, that though the Tribunal has given sufficient opportunity to the appellant, the appellant – insurance company has chosen not to file reply to the claim petition. In the background of the same, whether there was a breach of policy conditions, cannot be gone into particularly when the burden in regard to breach of policy conditions, more specifically about the Driver not holding valid licence and denial of employer-employee relationship was not established by the appellant, though such burden was on the appellant.

6. Apart from above, the loss of earning capacity is inferred by the Tribunal, based on the evidence of Dr. Jaiswal, who has deposed that because of loss of three fingers of the right hand, respondent no.1 – claimant will not be able to use the said hand for any purpose in practical life as he cannot perform routine activities by the said hand.

7. The Expert's evidence has proved the degree of disability and loss of earning capacity.

8. In that view of the matter, no case for interference is made out. The First Appeal being sans merit stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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