IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 183 OF 2002

United India Insurance Co.
24, Whites Road, Chennai
through its Divisional Manager,
authorized representative and
Signatory, Ahmednagar Division,
Kisan Kranti Building,
Ahmednagar, Dist. Ahmednagar. **.... APPELLANT**

V E R S U S

1. Sanjay Eknath Khairnar
Age : 27 Yrs., Occ. Driver,
R/o : Pilkhod, Tal. Malegaon,
Dist. Nashik.

2. Chandrakant Bhiva Ahire
Age : 53 Yrs., Occ. Business,
R/o : Survay No. 79/1,
Agra Road, Fulewadi,
Tal. Malegaon, Dist. Nashik. **.... RESPONDENTS**

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Mr. A.B.Gatne, Advocate for Appellant.
Mr. R.R.Karpe, Advocate for R.No. 1.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 18th JANUARY, 2016

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JUDGMENT :

1. The Appeal is filed to challenge the Judgment and Award in W.C.A. No. 13/1999 which was pending before the Commissioner for workmens compensation, Labour Court, Ahmednagar. Insurance Company has challenged the decision, in which compensation is given to the workman. Learned counsels for Both sides are heard.

2. Respondent No. 1 Sanjay Khairnar was working as driver on truck, heavy vehicle, of respondent no. 2 Chandrakant Ahire. The truck met with an accident and claimant sustained fracture injuries to both his legs. It is his case that even after the treatment, he is not fully recovered and he can not even stand on his legs without taking support. It is his case that he can not drive heavy vehicle or other vehicle and so there is total disability and he has lost his earning capacity. It is his case that he was aged about 24 years at the relevant time and he was getting ₹ 2,000/- per month as salary and ₹ 50/- per day as allowance.

3. Insurance company contested the matter and denied everything. Issues were framed on the basis of the aforesaid contentions. The claimant examined himself and Dr. Yadkikar to prove that there is total disability. He placed reliance on the record created by the Doctor and police papers.

4. This Court (other Hon'ble Judge) admitted the Appeal on 01/04/2002, but no substantial questions of law were formulated. It appears that after admission of the Appeal, the matter was placed before the Registrar [Judicial] and the Registrar [Judicial] granted stay to the execution of the Judgment and Award of the Commissioner. Thus, no compensation at all is deposited by the insurance company for filing the Appeal and in view of the stay granted by the Registrar [Judicial], the compensation amount was not deposited subsequently also.

5. Learned counsel for insurance company was expected to satisfy this Court on the point of tenability of the Appeal, as there is no compliance of provision of Section 30 of the Workmen's Compensation Act (in short 'the Act'). In

view of the contentions made in the Appeal memo, substantial questions of law can be formulated. So, two substantial questions of law as under are considered in the present matter.

[I] Whether the Commissioner under the Act has not considered the material in relation to the provision of the Act while ascertaining the nature of injury and loss of earning capacity and due to that there is perversity in the decision of the Commissioner ?

[II] Whether the bar created by proviso 3 to section 30 of the Act is applicable as against insurance company and for filing appeal it should first deposit the amount ?

6. This Court had occasion to consider both these points in F.A. No. 204 of 1999 decided with connected matters on 17/12/2015. This Court has held, after considering the law developed on the point of tenability of the Appeal, that without depositing the amount of compensation awarded by the Commissioner, insurance company can not file the Appeal. It is further held that even

the Court has no power to relax the condition imposed u/s 30 proviso 3 of Workmen's Compensation Act. Admittedly, in the present matter, at the time of filing of the appeal, compensation amount was not deposited by the insurance company and so the appeal needs to be dismissed on this ground.

7. On the second point, much was argued by the learned counsel for the insurance company due to the admission given by the claimant that after the accident, he got renewed his licence. It appears that the Doctor examined by the claimant gave admission during the cross examination that the claimant can walk without support and he 'may' drive light motor vehicle. This part of evidence can not be read in isolation as the evidence shows that on the basis of the clinical and medical examination, as there were fractures to both the legs, there was shortening of leg by 1 cm. and there was wasting of cap and thigh muscle, the claimant was advised not to drive four wheeler vehicle. Though the extent of physical disability was 45%, Doctor has given evidence that due to the injuries and permanent disability, the claimant can not use the legs for operation of

clutch, gear,brakes, etc. and he may loose control over the vehicle if he attempts to drive the vehicle. Due to these circumstances, Doctor has given opinion that there is 100% loss of earning capacity. No evidence in rebuttal is given by the insurance company.

8. In the aforesaid case, this Court has discussed the provisions of Sections 4 and 11 of the Workmen's Compensation Act. It is held that though the opinion given by the medical practitioner is the opinion of an expert and the authority may accept the opinion as it is or may presume few things, once the Doctor is examined, in view of the provisions of Section 11 of the Workmen's Compensation Act, appropriate steps need to be taken by the employer or by the insurance company for referring the employee to the medical board, if they have doubt about the opinion. Such step was not taken and so in view of the provision of Section 4 (1) (c) (ii) explanation 2 of the Workmen's Compensation Act, it is not possible for the court to interfere in the finding given on this point.

9. This finding is the finding on fact and so the

substantial question of law is not involved on this point. This Court holds that it is not possible to interfere in this finding. It is on the basis of the evidence and it can not be said that the Commissioner has not considered the material on record. Hence, no merits are found in the appeal.

10. In the result, both the points are answered against the insurance company and the First Appeal is dismissed.

11. In view of the dismissal of the First Appeal, Civil Application No. 1532 of 2002 does not survive and stands disposed of.

[T.V.NALAWADE, J.]