IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL ST/16680/2015
with
CIVIL APPLICATION Nos.7251/2015 & 1354/2016

NEW INDIA INSURANCE COMPANY LTD. AND OTHERS
VERSUS
NAMABAI GOVIND RATHOD
...
Advocate for Applicant : Mr. A B Kadethankar
Mr. Ade Ravindra B., Adv. For Resp.No.1

CORAM : P.R.BORA, J.

DATE : 20th April,2016.

COURT'S ORDER:

1) Heard. Admit. With consent of the learned Counsel for the parties, taken up for final hearing.

2) Appellant/insurance company has challenged the Judgment and Award dated 10th March, 2015 passed by the Commissioner for Workmen’s Compensation and Judge, Labour Court at Jalgaon (hereinafter referred to as the Commissioner) in WCA No.2/2009. The aforesaid claim application was filed by present Respondent

No.1 claiming compensation on account of the personal disablement incurred by him during the course of his employment with Respondent No.2-sugar factory. It was the contention of the original claimant that he got injured in the course of his employment with Respondent No.2-sugar factory and incurred 13% permanent disability. He, had, therefore, filed the application claiming compensation amounting to Rs.1,65,000/- jointly and severally from the present appellants and other respondents.

3) The claim application was resisted by the appellant/insurance company firstly on the ground that it was not maintainable before the learned Commissioner. The another contention which was raised by the insurance company was that no Award beyond the amount of the risk which was covered under the insurance policy could have been passed. The learned Commissioner, however, on the basis of evidence, which was brought before him, partly allowed the application and

held the claimant entitled to the compensation amounting to Rs.90,000/- and also awarded interest on the said amount. The learned Commissioner held the sugar factory and all other respondents including the present appellant, jointly and severally liable to pay the said amount of compensation. Being aggrieved by the aforesaid Judgment and Award, the insurance company has filed the present appeal.

4) Shri Kadethankar, learned Counsel appearing for the appellant, submitted that the insurance policy which was involved in the present matter was styled as "Janata Personal Accident Policy". The learned Counsel further submitted that the said policy was purchased by Respondent No.2-sugar factory. The learned Counsel submitted that under the said policy, the risk was to be covered only up to the extent of Rs.1,00,000/-. The learned Counsel further submitted that as per the terms of the policy, the purchaser of the policy should have applied

to the insurance company with necessary particulars so as to consider the proposal for award of compensation and the learned Commissioner was not having any jurisdiction to either entertain the claim under the said policy or to give any direction under the provisions of The Workmen's Compensation Act. The learned Counsel has, therefore, prayed for setting aside the impugned Award passed by the learned Commissioner. It was also brought to my notice that the appellant/insurance company has deposited the amount under the Award with the learned Commissioner as statutorily the same was required to be deposited and the same is lying with the learned Commissioner.

5) The learned Counsel appearing for the original claimant/Respondent No.1, submitted that the learned Commissioner was having every right and authority to entertain the application filed by the claimant and the compensation awarded by the learned Commissioner is just and adequate and

no interference is required in the impugned Judgment and Award.

6) In view of the fact that the quantum of the amount of compensation is not seriously disputed by the appellant/insurance company, the only issue which remains to be considered is whether the learned Commissioner was having authority to entertain the application and pass such Award. It appears to me that the said issue need not be gone into the present case and shall be kept open to be agitated in an appropriate proceedings. In the instant case, the application has already been entertained by the Commissioner and Award has also been passed. Having regard to the fact that the risk covered under the Janata Personal Accident Policy was up to sum of Rs.1,00,000/-, even if the contention of the learned Counsel appearing for the appellant/insurance company is accepted that appropriate course would have been that the sugar factory approaches the insurance company with a

proposal in prescribed proforma providing all necessary particulars, the amount of compensation would have remained the same, i.e. Rs.90,000/-. In the circumstances, now, I do not see any reason for setting aside the Award passed by the Commissioner and direct the sugar factory to move the proposal in the prescribed proforma claiming compensation under the said Janata Personal Accident Policy. When in both the contingencies the liability to pay the compensation was to be discharged by the insurance company and as mentioned herein before, when no dispute has remained as regards the quantum of compensation, it appears to me that there is no propriety in setting aside the Award on the ground of maintainability.

7) In view of the above, the present appeal stands disposed of with liberty to the original claimant to withdraw a sum of Rs.90,000/-, if already not withdrawn, from the amount deposited by the insurance company and if any balance

remains, the insurance company is permitted to withdraw the same.

8) The appeal stands disposed of in the aforesaid terms. Pending Civil Applications stand disposed of.

(P.R.BORA)
JUDGE

bdv/