IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3271 OF 2015
with
CA NO. 4350/2016

The New India Assurance Company Ltd.
A subsidiary of the General Insurance
Company of India Ltd., having one of
its Divisional office at Adalat
Road, Aurangabad through its
Aurorized Signatory = **APPELLANT**

VERSUS

1) Govind Nandu Rathod
Age: 38 Yrs., occu. Nil
R/o Varkhede Tq. Chalisgaon,
District Jalgaon.

2) Managing Director,
Dr.Baburao Bapuji Tanpure
Sahakari Sakhar Karkhana Ltd.
Shri Shivajinagar, Tq. Rahuri,
District Ahmednagar.

3) Mukadam
Ramdas Maharu Bacchav (Dhangar)
Age: 42 Yrs., occu. Labour
Contractor, R/o at Londhe,
40Gaon, Dist. Jalgaon.

4) Chairman,
The Krushak Seva Sahayyak Samiti
Trust, Shri Shivajinagar,
Tq. Rahuri, Dist. Ahmednagar. = **RESPONDENTS**
(Resp.No.1 is orig. claimant; Resp.Nos. 2-4 orig.Resp.Nos. 1 -3)

Mr. AB Kadethankar, Advocate for Appellant;

Mr. RB Ade, Adv. for Respondent No.1.

CORAM : P.R.BORA, J.

DATE : 4th April,2016.

ORAL JUDGMENT:

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.1/2009. 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 25% permanent

disability. He, had, therefore, filed the application claiming compensation amounting to Rs.1,50,000/- 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.1,24,788/- 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. The learned Counsel alternatively submitted that if this Court reaches to the conclusion that no compensation could have been awarded by the learned Commissioner beyond the covered risk under the insurance policy, i.e. sum of Rs.1,00,000/-, the

claimant is ready to restrict his claim to the said amount; and if the Award is modified to that extent, the claimant may not have any objection.

6) After having considered the submissions made as above by the learned Counsel appearing for the respective parties, apparently there remains no dispute as regards quantum of compensation. Apparently, the submission, made by the appellant/insurance company that when the risk was limited up to Rs.1,00,000/-, the Award ought to have been passed to that extent, appears to be acceptable. When the learned Counsel for the original claimant has come out with the proposal that the claimant would be happy with the said amount of Rs.1,00,000/- and he may not have any objection, if the Award is modified to that extent, the issue of quantum of the compensation stands resolved.

7) 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 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. As mentioned herein before, the learned Counsel appearing for the claimant has restricted the claim of compensation to Rs.1,00,000/-, having regard to the fact that the risk covered under the Janata Personal Accident Policy was restricted to the 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.1,00,000/-. 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. It would meet the ends of justice if the Award is modified and the liability of the insurance company to pay the compensation is restricted to the sum of Rs.1,00,000/-. Hence, the following order, -

ORDER

i) The appeal is partly allowed;

ii) The impugned Award stands modified to the extent that the claimant is held entitled for the total compensation of Rs.1,00,000/- in lump sum, to be paid to the claimant by the insurance company;

iii) The claimant is at liberty to withdraw Rs. 1,00,000/- from and out of the amount deposited by the insurance company before the learned Commissioner;

iv) The Insurance Company is at liberty to withdraw the balance amount lying with the learned Commissioner;

8) The appeal stands disposed of in the aforesaid terms. CA No.4350/2016 for withdrawal of the amount stands disposed of.

sd/-
(P.R.BORA)
JUDGE

bdv/