IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No.3060 of 2009

* Gautam S/o Laxman Pandit @ More
Age 41 years,
Occupation : Labour,
R/o Vaijapur,
Taluka and District Hingoli. .. **Appellant.**

Versus

1) Rameshwar S/o Vithoba Lode,
Age 40 years,
Occupation : Business
R/o Paheni,
Taluka and District Hingoli.

2) The Oriental Insurance Co. Ltd.
Through its Branch Manager,
Daulat Building, Shivaji Chowk,
Parbhani,
Taluka and District Parbhani. .. **Respondents.**

Shri. Pawankumar S. Agrawal, Advocate, for appellant.

Shri. A.G. Kanade, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 16th FEBRUARY 2016

JUDGMENT:

1) The appeal is filed by the original claimant against the judgment and award of N.F.A. No.7 of 2008

which was filed under the Workmen's Compensation Act, 1923 before the Commissioner appointed under the Workmen's Compensation Act, 1923 (Civil Judge Senior Division Hingoli working as Commissioner). The claim of the present appellant is partly allowed and liability is fastened on the respondents No.1, employer, to pay the compensation. Order of penalty is also made against the employer. Both the sides are heard.

2) It is the case of the original claimant that he was working as labour with respondent No.1 on his auto, goods carrier bearing No.MH-38/E-324. The accident took place on 7-5-2007. It is contended that as per direction of the employer claimant was present in the auto and one Ibrahim Pathan was driving the auto. It is contended that one buffalo suddenly dashed the auto and due to that the accident took place. It is contended that the claimant sustained injuries like fracture of left fibula, injury to face, nose etc. It is the case of the claimant that even after the treatment he is not fully recovered and he is suffering from permanent disability which is to the extent of 20%. It is the case of the claimant that in the past he

was earning monthly Rs.3000/- and due to the injuries he has lost his earning capacity. According to him, he was aged 40 years at the relevant time and he has lost 100% earning capacity. He had claimed compensation of more than Rs.3.31 lakh. The claim was made against employer and the insurance company of the vehicle.

3) The insurance company filed written statement and contested the matter. It is denied that there was relationship of employer and employee between the respondent No.1 and the claimant. It is denied that there is loss of earning capacity to the extent of 100%. The other contentions are also denied including the liability to pay compensation.

4) Respondent No.1 employer filed written statement and he contended that the claimant was working as cleaner on the vehicle. The other contentions regarding salary income, sustaining of injury are also admitted by the employer.

5) Before the Commissioner only the claimant gave evidence. He placed reliance on copies of police papers and he examined one Dr. Shah to prove that he had sustained injuries of aforesaid nature and he is suffering from permanent disability. The disability certificate issued in form B is proved in the evidence of the doctor.

6) The Commissioner has given meagre compensation by holding that loss of earning capacity is to the extent of 20%, equal to the extent of permanent disability. This is done on the basis of evidence given by the medical practitioner. The Commissioner has refused to fasten the liability on insurance company by holding that risk of the claimant, who claims himself to be a labour was not covered under the policy. As the claim was virtually admitted by the employer, the liability is fastened on the employer and he is made to pay penalty also.

7) This Court admitted the appeal on following substantial questions of law :-

(i) Whether the learned Tribunal was right in dismissing the claim against the respondent No.2, when Section 147 of the Motor Vehicles Act specifically provides that the Insurance Company is liable to pay compensation to the employees working on the goods vehicle though separate premium has not been accepted or paid to the Insurance Company ?

(ii) Whether the Tribunal has rightly answered the Issue Nos.5 and 6 in its judgment and award ?

8) In the petition it is the case of the appellant that he was working as the labour and it was a goods carrier vehicle. Such evidence is given before the Commissioner. Copy of policy is exhibited by the Commissioner at Exhibit 41 and it shows that it was public carrier package policy. Premium was paid in respect of the owner/driver. Additional premium was paid in respect of driver and cleaner under item 40 but no additional premium was paid in respect of other employees, labour. Though the employer, owner, has filed written statement that the appellant, claimant was his cleaner, the claimant has come with specific case that he was working as a labour. In view of these circumstances the Commissioner

has held that there was no coverage in respect of the risk to the claimant and no liability is fastened on the insurance company.

9) So far as quantum of compensation is concerned it can be said that the Commissioner has not committed any error as the evidence given by the medical practitioner who has issued disability certificate is accepted as it is. Due to fracture injury to leg it is held that there is permanent disability and its extent is 20%. The doctor could not say as to whether the earning capacity has come down by more than 20%. In view of these circumstances the Commissioner has held that the earning capacity has come down by 20%. Then as per the procedure laid down in section 4 of the Workmen's Compensation Act, 1923, the compensation is calculated. In view of these circumstances this Court holds that it is not possible to interfere in the decision given by the Commissioner.

10) Learned counsel for the claimant placed reliance on a case reported as **(2010) 10 SCC 347 (Palraj**

v. Divisional Controller, NEKRTC). In that case there was specific evidence on the loss of earning capacity and so the facts were different.

11) In the result, the appeal stands dismissed.

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

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