

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Amk

**FIRST APPEAL NO. 1269 OF 2015
WITH
CIVIL APPLICATION NO. 3339 OF 2014
WITH
CIVIL APPLICATION NO. 4075 OF 2015**

United India Insurance Co. Ltd.]
Motor third party office]
5th Floor, Union Co-operative]
Insurance Building, Sir P. M. Road,]
Fort, Mumbai - 400 001.] .. Appellant

Vs.

1. Shri Jagdish Madhukar Patil]
Age-45 years, Occ.- Nil,]
Residing at Mahagaon, Boisar,]
Tal- Palghar, Dist.-Thane.]
2. Shri Chandrashekar Yashwant Raut]
R/o. At post Kudan, Tal.-Palghar,]
Dist.- Thane] .. Respondents

Mr. Mehta i/b KMC Legal Venture for the Appellant.
Mrs. Rina Kundu for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : 6th OCTOBER, 2016.

ORAL JUDGMENT

1. Admit.
2. This appeal is heard finally at the stage of admission as the issue involved in this appeal is very short one.

3. This appeal takes an exception to the Judgment and Award passed by the Commissioner for Workmen's Compensation and Judge, Labour Court, Thane in Application (WCA) No. 491/C-133 of 2011.

4. The appellant is the original respondent No.2-Insurance Company. The said application was preferred by the present respondent No.1-claimant seeking compensation on account of the injuries sustained in the accident involving an Auto Rikshaw No. MH-04 E-1376 belonging to respondent No.1. As per the claimant, on 27.12.2009, while he was working as a driver on the said rikshaw, the offending vehicle bearing No. MH-04 BB-5043 came from opposite direction and gave dash to his rikshaw. As a result, he sustained fracture to his right leg and he is unable to continue his work as rikshaw driver. It is further his case that he has sustained 48% permanent partial disability and 100% work disability. At the time of the accident his age was 44 years and he was getting monthly salary of Rs.4,000/-. He has accordingly claimed the compensation of Rs.7,80,876/- with interest thereon.

5. This application came to be resisted by original respondent No.1, the owner of the vehicle and the employer of the claimant and also by the Insurance Company. Respondent No.1 admitted the factum of accident and the claimant being his employee. However, according to the original respondent No.1, as the auto rikshaw was insured with the appellant, he is not liable to pay any compensation. According to the

appellant-Insurance Company, the relationship of the employer and employee was not established and consequently the salary of the claimant Rs.4,000/- p.m. is also not proved as no document was produced to show that the claimant was getting salary of Rs.4,000/- p.m. and his age was 44 years.

6. On these respective pleadings of the parties, the Trial Court framed necessary issues and on the basis of evidence adduced before it, that of the claimant and Medical Officer Dr. Santosh Pradarsh, the Trial Court held the employer and employee relationship as proved and, accordingly, allowed the claimant's petition. However, while doing so, the Trial Court held the salary of the claimant to be Rs.6,000/- p.m. and his age to be 44 years and applying multiplier of 216.91, awarded the compensation of Rs.6,21,072/- with interest @ Rs.12% per annum from 28.01.2010.

7. This Judgment of the Trial Court is challenged in this appeal mainly on the ground that the employer and employee relationship is not established. However, it is pertinent to note that the original respondent No.1, the employer had admitted the relationship as employer-employee and there is nothing elicited in cross-examination of the claimant to disbelieve the same.

8. The second ground on which the impugned Judgment and

Award is challenged is that, as per the claimant himself, his salary was Rs.4,000/- per month. However, the Trial Court has considered the said salary at Rs.6,000/- per month. Moreover, the Trial Court has also applied multiplier of 216.91, whereas considering the age of the claimant, it should have been 172.52. Learned counsel for the claimant fairly concedes these two aspects. In view thereof, the impugned Judgment and Award passed by the Trial Court needs to be modified to this limited extent.

9. Accordingly, the appeal is allowed. The appellant-Insurance Company with the original respondent No.1 is liable to pay jointly and severally the sum of Rs.4,000/- x 60%x172.52 equal to Rs. 4,14,048/- to the respondent-claimant with interest @ 12% per annum thereon from 28.01.2010 till realization of the entire amount.

10. As it is submitted that the appellant-Insurance Company has already deposited in the Trial Court the entire amount of Rs.6,21,072/- with interest thereon, the appellant-Insurance Company is entitled to withdraw the excess amount deposited in the Trial Court along with proportionate interest thereon.

11. In view of the disposal of the appeal, the civil applications do not survive, hence stand disposed of accordingly.

[DR. SHALINI PHANSALKAR-JOSHI, J.]