IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1934 OF 2016

ICICI LOMBARD GENERAL INSURANCE CO. LTD.
VERSUS
KALIMA IRPHAN SHAIKH AND OTHERS
...
Advocate for Appellant : Mr S S Patil
Advocate for Respondents : Mr R D Biradar
...
CORAM : V.K. JADHAV, J.
Dated: February 20, 2017
...

PER COURT :-

1. Heard finally with consent at admission stage.

2. Being aggrieved by the judgment and Award passed by the Commissioner for W.C. Act and Judge, Labour Court, Latur in WCA No.114/2009, the original respondent no.2 insurer preferred this appeal.

3. Brief facts, giving rise to the present appeal are as follows :-

Tempo bearing registration No.MH-21/5163 was owned by respondent No.2 Mubin s/o Salim Shaikh (original respondent No.1.). Deceased Irphan was in his employment as a cleaner on the aforesaid tempo on monthly wages of Rs.3,000/- beside a daily Bhatta of Rs.50/-. On 30.4.2009 deceased Irphan was on duty on said tempo as a cleaner and on that day tempo was proceeding towards village Kanghara. On way, the accident had taken place without involving any other vehicle. Said tempo turned turtled and in consequence of which, deceased Irphan died on the spot. Legal heirs of deceased Irphan approached to the Commissioner Workmen's Compensation by filing WCA No.114/2009 for grant of compensation.

4. The original respondent No.1 Mobin by his written statement Exh.15 admitted each and every averment made in the application.

5. The appellant original respondent no.2 strongly resisted the said application by filing written statement and denied each and every averment made in the application. It has contended that on the date of accident, vehicle involved in the accident was standing in the name of original respondent no.5 Babukhan Pathan and original respondent no.1 Mubin was not the

owner of the said vehicle as on the date of accident. In view of the matter, the appellant-insurer is not liable to pay the compensation as there was no employer-employee relationship between deceased Irphan and respondent Babukhan Pathan. Deceased Irphan was not in the employment of respondent Babukhan as on the date of accident. Respondent Babukhan Pathan has not contested the application by filing written statement. The learned Commissioner for Workmen's Compensation Act and Judge Labour Court, Latur by judgment and award dated 19.5.2012 in WCA No.114/2009 allowed the application and thereby directed the respondent no.1 appellant and respondent no.2 and 5 to pay jointly and severally compensation of Rs.3,29,925/- with interest thereon @ 12% p.a. from the date 30.6.2009 to till realization of full amount, to the applicant and respondent nos.3 to 4 within two months from the date of this order. Hence, this appeal.

6. The learned counsel for the appellant-insurer submits that, deceased Irphan was not in the employment of the respondent Babukhan Pathan as on

the date of accident. There was no employer employee relationship exists between the insured respondent no.5 and deceased. The appellant-insurer is thus not liable to pay any compensation. Learned counsel submits that, as on the date of accident the vehicle involved in the accident was standing in the name of respondent Babukhan Pathan and subsequent to the accident, the vehicle was transferred in the name of respondent Mubin. Learned counsel submits that policy does not cover the risk of the cleaner as no extra premium was accepted for that. Policy issued in favour of the respondent Babukhan Pathan in respect of the said vehicle covers only risk towards third party and a paid driver. Learned counsel submits that deceased Irphan was travelling in the vehicle in the capacity as a cleaner and therefore, he cannot be treated as third party nor his risk is covered under the policy. The learned Commissioner has however not considered the same and awarded the compensation by holding the present appellant-insurer liable jointly and severally as alongwith respondent owner to pay compensation to the claimants.

7. Learned counsel in order to substantiate his contention, places reliance on following cases.

1. Ramashray Singh Vs. New India Assurance Co. Ltd., reported in 2003 AIR (SC) 2877.
2. G. Govindan Vs. New India Assurance Co. Ltd., reported in 1999 AIR (SC) 1398.

8. Learned counsel for respondent original claimant submits that, the respondent Mubin has admitted the averments made in the claim petition and admittedly, the accident had taken place involving the said vehicle Tempo when it was in the possession of respondent Mubin as a owner thereof. Learned counsel submits that in view of the provisions of Section 157 of the Motor Vehicles Act, 1988 certificate and policy of the insurance is deemed to be transferred in favour of the person to whom motor vehicle is transferred. Learned counsel for respondent original claimant submits that appellant insurer has not raised a specific ground before the Commissioner Workmen's compensation that risk of the cleaner was not covered under the policy by accepting extra premium and therefore, the appellant-insurer is not liable to pay any compensation. Learned counsel

submits that, in both the cases relied upon by the learned counsel for the appellant-insurer, respondent insurer in that case has refuted the claim by raising a specific ground to that effect in the pleadings. A specific ground was raised in those cited cases that no employee of the insurer apart from the driver was covered. Learned counsel submits that, in the instant case, no such issue was raised in the pleadings nor issue was framed to that effect. Learned Commissioner has, therefore, rightly fastened the liability on the appellant-insurer jointly and severally with respondent owner. Learned counsel submits that, respondent-owner Mubin has also admitted all averments made in the claim petition. Learned counsel thus submits that there is no substance in the appeal and thus the appeal is liable to be dismissed.

9. On careful perusal of the pleadings, evidence and impugned judgment and award, it appears that, the accident had taken place on 30.4.2009. In the record of the registration authority changes have been made in May, 2009 in respect of ownership. Respondent Mubin

has admitted averments made in the claim petition. He has admitted in his written statement that deceased Irphan was cleaner employed by him on the tempo involved in the accident and said tempo was purchased by him from respondent Babukhan Pathan.

10. The learned Commissioner has also discussed the issue at length in paragraph No.15 and 16 of the judgment and observed that, though vehicle involved in the accident was transferred in the name of respondent Mubin on 5.5.2009, as on the date of accident said vehicle was in possession of respondent Mubin as a owner thereof and sale of movable property is governed by the provisions of Sale of Goods Act and transferror therefore does not have any right or interest in the vehicle after delivery of the vehicle to the transferee. Further, in view of the provisions of Section 157 of the M.V. Act, 1988, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. The provisions in the earlier Act were

that where an application for transfer of the certificate and policy of the insurance to the intending purchaser has been made and no objection is raised within 15 days thereof, certificate and policy are deemed to be transferred in favour of the transferee of the motor vehicle from the date of its transfer. In view of the provisions of section 157 of the M.V.Act, 1988 certificate and policy of insurance deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of such transfer.

11. Learned counsel for the appellant-insurer has vehemently submitted that, risk of deceased Irphan who was travelling in the said vehicle involved in the accident as cleaner is not covered under policy. On careful perusal of the pleadings of the appellant-insurer before the Commissioner, I do not find that this issue has been specifically raised. Consequently, no issue is framed to that effect. Even, the appellant-insurer has not raised said point during the course of oral submissions before the Court below. In the case Ramsharay Singh Vs. New India Assurance Com Ltd. (supra) relied upon by

learned counsel for insurer, the insurer had raised a specific defence to effect that no employee of the insured apart from the driver was covered under the policy. In view of this, this ground raised for the first time in the appeal cannot be considered.

12. So far as quantum is concerned, the commissioner has rightly considered the wages of deceased Irphan as admitted by the respondent owner and awarded the compensation as per the provisions of Workmen's Compensation Act. No interference is required.

13. In view of the above discussion, there is no substance in the appeal. Appeal is liable to be dismissed. Hence, following order.

ORDER

I. First Appeal is hereby dismissed. No costs.

II. First Appeal accordingly disposed of.

III. Respondents claimants are permitted to withdraw the amount deposited before the Commissioner by the appellant-insurer.

IV. Pending civil applications accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

…

aaa/-