

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2892 OF 2016
IN
FIRST APPEAL (STAMP) NO. 10399 OF 2016
WITH
CIVIL APPLICATION NO. 2893 OF 2016
IN
FIRST APPEAL (STAMP) NO. 10399 OF 2016

United India Insurance Co. Ltd. .. Applicant / Appellant
vs.
Shri Anand Madhukar Surve & Anr. .. Respondents

Mr. Ketan Joshi for Applicant / Appellant.

CORAM : M. S. SONAK, J.
DATE: 08 FEBRUARY 2017

P.C :

1] This is an appeal against the order dated 1 October 2015 made by the Employees Compensation Commissioner under the provisions of the Employees' Compensation Act, 1923. There is delay of about 109 days in instituting the appeal. However, Mr. Joshi, learned counsel for the applicant / appellant was heard and upon such hearing, since, I am satisfied that the appeal raises no substantial question of law, there is no reason to issue any notice to the respondents. There is sufficient cause shown for not instituting the appeal within the prescribed period of limitation. The delay in institution of appeal can always be condoned. However, there is no case made out to entertain the appeal, since, it does not raise any

substantial questions of law as contemplated by section 30 of the said Act.

2] Mr. Joshi has pressed the following two grounds in support of the appeal :-

“(A) That the substantial question of law involved in the First Appeal is whether the learned Court below has properly appreciated that the Respondent No. 2 employer is contesting the matter and has categorically denied the employer and employee relationship between him and the original Applicant, Respondent No. 1 herein and have flatly refused any liability and has also refused the contention that he was paying any salary and bhatta to the original Applicant, Respondent No. 1.

(B) That the substantial question of law involved in the First Appeal is whether the learned Court below has properly appreciated the liability of Insurance Company, the present Appellant to indemnify the insured employer comes into picture when the original employer accepts and admits his own liability. The learned Court below ought to have appreciated that the Policy is nothing but a concluded contract as per the provisions of Indian Contract Act, 1872 and, therefore, has to be construed strictly.”

3] In the first place, the grounds basically relate to appreciation of evidence and in that sense, do not raise any questions of law, much less, any substantial questions of law. That apart, the material on record indicates that even though the owner of the vehicle (opponent no. 1) had raised defences to the effect that Anand Surve (claimant) was not his driver or that he was not driving the car on the date of the accident, the owner, has miserably failed in making good such defences. The material on record bears out that Anand Surve was not only the driver employed by the owner but further,

Anand Surve was very much in the driver's seat on the date of the fateful accident. On such date, Anand Surve was driving and in fact, this is borne out by even documentary evidence placed on record. In proceedings, where, the owner has raised a claim for damage to his car, the owner has himself, relied upon such documentary evidence in the form of FIR and other documents. From the overall evidence also, it is quite clear that the owner has failed in substantiating the factual defences raised. The Commissioner has properly appreciated the oral as well as documentary evidence on record and the questions raised now by the appellant – insurance company can, under these facts and circumstances be hardly regarded as any questions of law, much less, substantial questions of law.

4] For the aforesaid reasons, whilst the civil application seeking condonation of delay is allowed, the appeal itself is dismissed on the ground that it raises no substantial questions of law. Consequently, civil application for stay does not survive and is disposed of accordingly.

(M. S. SONAK, J.)