IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.768 OF 2016
IN
FIRST APPEAL (ST) NO.25760 OF 2015
WITH
CIVIL APPLICATION NO.769 OF 2016
IN
FIRST APPEAL (ST) NO.25760 OF 2015

Reliance General Insurance Co. Ltd.
Through its Manager,
Mr.Amit Ashwini Sharma ..Applicant/Appellant
V/s.
Mr.Ramkripal Ramdhar Pal & Anr. ..Respondents

Mr.Rajesh Kanojia a/w Ms.Deepika Prabhale i/by Res Juris for the Applicant/Appellant.

Mr.T.J. Mendon for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 09 JANUARY 2017.

P.C.

1. Heard Mr.Rajesh Kanojia for the appellant and Mr.T.J. Mendon for the Respondent.

2. At the outset, Mr.Mendon learned counsel for the respondent has raised an objection to the maintainability of this

appeal on the ground that the appeal raises no substantial question of law and that an appeal under Section 30 of the Employee's Compensation Act 1933 (said Act) can be entertained only if it is involves a substantial question of law.

3. Mr.Rajesh Kanojia learned counsel for the appellant submits that as per Form 21 read with Rule 47(a) and (d) of the Central Motor Vehicle Rules 1989 (Sale certificates of the vehicle) the siting capacity of the entire vehicle was indicated as “one”. Therefore, he submits that respondent-claimant, who claims to be a cleaner in the motor vehicle, was not entitled to be present in the vehicle as the stage when the vehicle met with the accident in question. Mr.Kanojia submits that in any case, this is a breach of the terms of the Insurance Policy and therefore, the Insurance Company is absolved of the liability in the present case. Mr.Kanojia submits that this is substantial question of law and the appeal therefore, deserves to be entertained.

4. Mr.Mendon learned counsel for the respondent has

points out that Form 21, upon which reliance is now placed was never produced in evidence. He points out that the impugned order has itself recorded that two opponents closed. their evidence vide pursis Exh.C6 and C7 respectively and have not produced any oral or documentary evidence. That apart Mr.Mendon points out that such a defense was not even raised in the written statement or at the stage when the claim application was disposed of. He submits that it is for the same reason that such a ground does not find reference in the impugned order. He submits that the ground now sought to be raised is in the nature of the factual dispute and involves no question of law much less in substantial question of law. He has relied upon the decision of the Hon'ble Supreme Court in the case of ***T.S. Shylaja V/s. Oriental Insurance Co. Ltd. & Another (2014 ACJ 480)*** to submit that no appeal under Section 30 of the said act can be entertained unless, any substantial question of law is found to be involved.

5. Mr.Kanojia, by way of rejoinder, has placed reliance upon decisions of the Hon'ble Supreme Court in the case of

Shakulntala Chandrakant Shreshti V/s. Prabhakar Murti Garvali & Another (2007-1-LLJ-474) and ***National Insurance Company Limited V/s. Mastan and Company (2006-SCJ-40)***. He submits that the appeal is maintainable and should be entertained.

6. From the perusal of the impugned judgment and order, it is quite clear that the appellant-Insurance Company led no oral or documentary evidence in the matter. In such circumstances, it is not understood on what basis, the appellant can make reference to Form 21 insofar as this appeal is concerned. Be that as if may, if the entire written statement filed by the appellant is perused, it is cleared that the ground which is now sought to be raised was never raised in the written statement. The impugned order at paragraph 5 also refers to the contentions raised on behalf of the appellant. Therein also there is absolutely no reference to the ground which is now proposed to be raised. In such circumstances, it cannot be said that the ground which is now proposed to be raised involves any question of law, much less a substantial

question of law. The ground which is now proposed to be raised is basically an issue of fact for which, neither has any foundation has been laid in the written statement nor was any evidence led by the appellant.

7. From the impugned order, the defense raised by the appellant was that there was no employer-employee relationship between the respondent No.1 and respondent No.2; a quantum of salary was also denied; it was submitted that respondent no.2 employer had failed to inform the Insurance Company within time and such failure constitute of breach of terms and conditions of the policy. From this it is clear that the ground which is now sought to be raised was never raised before the Commissioner. It is impermissible for the appellant to even raise such ground for the first time in appeal particularly when such a ground was not even raised in the written statement or before the Commissioner or at the stage of arguments. Admittedly, in this case appellant has led neither oral evidence nor has produced any documentary evidence.

8. In the case of ***T.S. Shylaja (Supra)*** the Hon'ble Supreme court at paragraphs 8 and 10 has observed thus :-

> *"8. What is important is that in terms of the first proviso, no appeal is maintainagble against any order passed by the Commissioner unless a substantial question of law is involved. This necessarily implies that the High Court would in the ordinary course formulate such a question or at least address the same in the judgment especially when the High Court takes a view contrary to the view taken by the Commissioner.*
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> *10. The only reason which the High Court has given to upset the above finding of the Commissioner is that the Commissioner could not blindly accept the oral evidence without analysing the documentary evidence on record. We fail to appreciate as to what was the documentary evidence which the High Court had failed to appreciate and what was the contradiction, if any, between such documents and the version given by the witnesses examined before the Commissioner. The High Court could not have, without adverting to the documents vaguely referred to by it, upset the finding of fact which the Commissioner was entitled to*

> *record. Suffice it to say that apart from appreciation of evidence adduced before the Commissioner, the High Court has neither referred to nor determined any question of law much less a substantial question of law, existence whereof was a condition precedent for the maintainable of any appeal under section 30. Inasmuch as the High Court remained oblivious of the basic requirement of law for maintainability of an appeal before it and inasmuch as it treated the appeal to be one on facts it committed an error which needs to be corrected."*

9. From the bare reading of the provisions of Section 30 of the said Act, it is quite clear that an appeal lies only when it involves a substantial question of law and not otherwise. This position has infact been reiterated in the case of *National Insurance Company Limited V/s. Mastan & Another (Supra)* which paragraph 30. In Mastan (Supra) Hon'ble Supreme Court has held that while defending the action the insurer is not precluded from raising any defense under Section 149(2) of the Motor Vehicle Act 1988. However, that it is not implied that

the Insurance Company can raise some factual dispute for the first time in appeal after having failed to plead such defence in their written statement or to led any evidence before the commissioner.

10. ***Shakunatala Chandrakant Shreshti (Supra)*** *is* relied upon to submit that jurisdictional question will involve substantial question of law or that finding of fact arrived at without there being any evidence will also five rise to substantial question of law. In this case there is no question of jurisdiction involved. The jurisdiction of the Commissioner was never questioned and in the facts and circumstances of the present case the same was not even questionable. This is not a case of record of any finding of fact without there being evidence to back the same. The question which the appellant now seeks to raise is really a question of fact and the same cannot be entertained in this appeal, particularly because such a question was not even raised by the appellant in its written statement.

11. For the aforesaid reasons, this appeal is dismissed, since, the appeal involves no substantial question of law.

12. The interim order if any, stands vacated. Since, the appellant has deposited the amount awarded by the Commissioner before the Commissioner himself, the respondent No.1 shall be at liberty to withdraw the same.

13. In view of the dismissal of the appeal the Civil Application does not survive and the same is disposed of.

(M. S. SONAK, J.)