

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

FIRST APPEAL NO. 223 OF 2018

The New India Assurance Co. Ltd.	Appellant
V/s.	
Radheshyam Shreeram Yadav and anr.	Respondents

Mr. D.R. Mahadik for the appellant.
Mr. T.J. Mendon for respondent no.1.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 30th AUGUST, 2019**

P.C.:-

. The appellant herein has challenged the impugned judgment and award dated 01/01/2013 passed by the learned Commissioner for Workmen's Compensation and Judge, 11th Labour Court, Mumbai in Application (WCA) No.469/C-147/2007.

2. Mr. T.J. Mendon, the learned counsel for respondent no.1 contends that the appeal does not raise any substantial question of law and needs to be dismissed in time. He has relied upon the decision of the Apex Court in *North East Karnataka Road Transport Corporation v/s. Sujatha 2019 ACJ 29* wherein the Apex Court has observed thus :-

“ 9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident,

whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue/s his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.

11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lie only against the specific orders set out in clause (a) to (e) of Section 30 of the Act with a further rider contained in first proviso to the Section that the appeal must involve substantial question of law.

12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a Regular First Appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case.

13. When an employer files the appeal, he is under a legal obligation to deposit the entire awarded sum in terms of second proviso to Section 30 of the Act as a precondition to file the appeal in the High Court except where the appeal is filed against the order falling in clause (b).

14. It is only when the employer deposits the entire awarded money along with the memo of appeal duly certified by the Commissioner, his appeal is regarded as being properly filed in conformity with the requirement of Section 30 of the Act.

15. Such appeal is then heard on the question of admission with a view to find out as to whether it involves any substantial question of law or not. Whether the appeal involves a substantial question of law or not depends upon the facts of each case and needs an examination by the High Court. If the substantial question of law arises, the High Court would admit the appeal for final hearing on merit else would dismiss in limini with reasons that it does not involve any substantial question/s of law.”

3. The present appeal is considered in the light of the principles laid down by the Apex Court. The appellant has challenged the judgment on two grounds viz. that there was no employer-employee relationship between the respondent nos.1 and 2 and that the learned Commissioner has erred in considering the loss of earning to 100% when the disability was 30%.

4. It is to be noted that the respondent no.1 had deposed that he was the driver of the respondent no.2 and that he had met with an accident in the course of his employment. The respondent no.2 had not contested the proceedings and the appellant – insurance company had not adduced any evidence in rebuttal evidence. It was in these

circumstances that the Commissioner by the impugned judgment upheld the relationship of employer-employee between the respondent nos.1 and 2.

5. The evidence on record clearly indicate that the respondent no.1 had sustained injury to his right eye. The respondent no.1 has stated that in view of the said injury, he was unable to discharge his duty as a driver. He claims that the injury has resulted in 100% loss of earning. The respondent no.1 was examined by Dr. Varsha Gore, Eye Surgeon, MGM Hospital. The evidence of this witness, which has gone unchallenged, clearly indicates that the cornea as well as uveal tissue of his right eye is damaged. She has stated that the vision of his right eye is impaired. He cannot see but can only appreciate the light. She has certified that this is a permanent injury. She states that the respondent no.1 has been advised not to drive a vehicle. Oral testimony of this witness is duly supported by disability certificate at Exhibit – U-17.

6. The evidence on record indicates that the respondent no.1 was not fit to drive and consequently could not continue with his job as a driver. He was incapacitated from doing work which he was capable of performing at the time of the accident. Hence, even though the

disability is assessed at 30% , the respondent no.1 has proved that he has been rendered unfit to work as a driver, resulting in 100% loss of earning capacity. The learned Commissioner has examined the question in right perspective and the finding recorded by the Commissioner is reasonable and does not required to be corrected and interfered with in this appeal.

7. Under the circumstances and in view of the discussion supra, the appeal does not involve any substantial question of law and is accordingly dismissed.

**Preeti H.
Jayani**

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Preeti H. Jayani
Date: 2019.10.11
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(SMT. ANUJA PRABHUDESSAI, J.)