

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

FIRST APPEAL NO.1279 OF 2019

The New India Assurance Company Ltd. .. Appellant

vs.

Shri Nigaum S. Tiwari & Anr. .. Respondents

Mr.D.R.Mahadik for the appellant

**CORAM : K. K. TATED, J
DATE : SEPTEMBER 26, 2019**

P.C.:

. Heard.

2 By this First Appeal, appellant Insurance Company is challenging the judgment and award dated 30.05.2013 passed by Commissioner for Workmen's Compensation and Judge at Thane in Application (WCA) No.463/C-101/2008 holding that the Respondents original Claimants are entitled compensation of Rs.2,68,669/- from appellant Insurance Company and Respondent no.2 jointly and severally and also entitled to recover 12% interest on the said amount along with 50% of penalty from respondent no.2, owner of the vehicle.

3 The learned counsel for the Insurance Company submits that the impugned judgment and award passed by Commissioner for Workmen's Compensation is against justice, equity and good conscious and same is liable to be dismissed with costs. He submits that in the present proceeding, Respondent no.1 original Claimant failed and neglected to prove the relationship of employer and employee with Respondent no.2, owner of the vehicle. Therefore, Labour Court erred in coming to the conclusion that Respondent no.1 is entitled compensation under the Workmen's Compensation Act, 1923.

4 The learned counsel for the appellant further submits that Respondent no.1 examined medical officer Dr. Naresh Madanlal Khanna to prove the disability certificate Exhibit U-21 which shows that Respondent no.1 sustained 52% permanent partial disability. He submits that said medical officer failed to consider the fact that at the time of the accident Respondent no.1 was working as a driver. Therefore, there is no question of holding that Respondent no.1 sustained 52% permanent partial disability. Therefore, compensation awarded by the Commissioner in favour of Respondent no.1 is on higher side.

5 The learned counsel for the appellant submits that Respondent no.2 remained absent before the learned 2nd Labour Court, inspite of service. This itself shows that there was collision between Respondent nos.1 and 2. He submits that for want of evidence of the Respondent no.2 and or written statement on behalf of him, shows that there was collision

between Respondent nos.1 and 2 and therefore, impugned judgment and award passed by the learned Commissioner is required to be set aside.

6 The learned counsel for appellant submits that in the present proceeding, following questions of law are involved for considering of this court.

“(a) Whether insurer is liable to indemnify the owner of the vehicle/alleged employer that had employed a driver who was not holding valid driving licence that (i.e. holding fake Motor Driving Licence) as contemplated under the W.C.Act/M. V. Act and or the Policy?”

(b) Whether relationship of employee-employer is proved by the claimants?

(c) Whether the compensation awarded by the Labour Court, on the basis of Disability Certificate/evidence of expert witness is according to law.

(d) Whether “Salary” could be assumed at Rs. 4,000/- p.m. without cogent evidence?

7 On the basis of these submissions, the learned counsel for the appellant submits that the impugned judgment and award dated 30.05.2013 passed by the learned Commissioner is required to be set aside. He submits that if appeal is not allowed, irreparable loss will be caused to them.

8 I have heard the learned counsel for the appellant at length. Admittedly, the present First Appeal is filed by the appellant Insurance Company under section 30 of the Workmen's Compensation Act, 1923 challenging the judgment and award dated 30.5.2013 passed by Commissioner for Workmen's Compensation and Judge, 2nd Labour Court, Thane in Application (WCA) No.463/C-101/2008. Appeal under section 30 of the said Act lies only on the question of law.

9 In the present proceeding, Respondent no.1 was in employment with Respondent no.2 as a Driver of Auto Rickshaw. He was getting sum of Rs.4,000/- per month by way of salary. On the date of accident, he was 26 years old. When he was on duty, accident took place and he sustained several injuries. Because of that, he filed Application for Compensation under Workmen's Compensation Act, 1923. Bare reading of impugned judgment shows that appellant failed to adduce any evidence before the learned Commissioner. Not only that, they failed to raise any objection about holding of driving licence by the claimant on the date of accident. First time, appellant raised this objection in the present First Appeal.

10 It is to be noted that Respondent no.1 placed on record documentary evidence vide Exhibit U-15 to U-19 showing that in an accident which occurred on 7.1.2003, he sustained the injury. Exhibit U-15 is copy of FIR registered at Nallasopara Police Station.

11 It is to be noted that in support of the contention about employment Respondent no.1 placed on record several documents i.e. Exhibit U-15 to U-20. Those documents show payment of salary to the Respondent no.1 from Respondent no.2. Apart from that, to show the injury sustained by the Respondent no.1, he examined medical officer Dr.Naresh Madanlal Khanna at Exhibit U-20. The said Medical Officer issued disability certificate showing that Respondent no.1 sustained disability to the extent of 52%.

12 Considering these facts, the Commissioner held that Respondent no.1 is entitled compensation to the extent of Rs.2,68,669/- and interest and penalty from the respondent no.1 owner of the vehicle.

13 It is to be noted that question of law framed by the appellant in the present First Appeal as reproduced hereinabove, cannot be treated as question of law as per the provisions of Workmen's Compensation Act, 1923. Even Apex Court in the matter of ***North East Karnataka Road Transport Corporation v. Sujatha***¹ held that Appeal under the said Act lies only on substantial question of law. Paragraph 9, 10 and 11 reads thus:

¹ (2019) ACJ 29

“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 afore-mentioned 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(1) of the Act with a further rider contained in first proviso to the Section that the appeal must involve substantial question of law.”

14 Considering the submissions made by the learned counsel for the Appellant and the facts on record and on the basis of judgment of Apex Court in the matter of ***North East Karnataka Road Transport Corporation v. Sujatha*** (Supra), I am of the opinion that appellant failed to make out any substantial question of law involved in the present First Appeal. Hence, following order is passed :

- a. First Appeal stands dismissed.
- b. No order as to costs.

(K.K.TATED, J.)