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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1045 OF 2015

1. Mr.Gangaram Rambhau Doiphode,  
Aged about 53 years.
2. Mrs.Gangubai Gangaram Doiphode,  
Aged 48 years.

Both are residing at Room No.1,  
Shivshankar Chawl No.3,  
Vadari Pada,Hanuman Tekadi,  
Shiv Vallabh Road, Kajupada,  
Borivali (East), Mumbai – 400 066.

...Appellants

....Versus....

1. Mr.D. Kumar Naidu,  
Proprietor of M/s.Shree Krishna Transport  
C-3/106, Sai Sugandh Co-operative Housing  
Society Limited, Vaishali Nagar,  
Dahisar (East), Mumbai – 400 068.
2. ICICI Lombard General Insurance Co. Ltd.  
Peninsula House, 4<sup>th</sup> Floor, D.N. Road,  
Fort, Mumbai.

..Respondents

Mr.T.J. Pandian for the Appellants.

Ms.Varsha Chavan for the Respondent No.2.

**CORAM : R.D. DHANUKA, J.**  
**DATE : 20TH FEBRUARY, 2020.**

**ORAL JUDGMENT :-**

1. By this First Appeal filed by the appellants under section  
30 of the Workmen's Compensation Act, 1923 the appellants

( original applicants) have impugned part of the judgment and award dated 12<sup>th</sup> October, 2012 passed by the learned Commissioner for Workmen's Compensation & Judge, 4<sup>th</sup> Labour Court, Mumbai.

2. The application filed by the appellants for compensation is rejected against the respondent no.2 i.e. I.C.I.C.I. Lombard General Insurance Company Limited. Claim for interest made by the appellants has not been awarded from the date of accident but has been awarded interest from the date of judgment and award dated 12<sup>th</sup> October, 2012 till the date of final realization of the entire compensation amount. By consent of the appellants and the respondent no.2, the First Appeal is decided finally at the admission stage. Some of the relevant facts for the purpose of deciding this appeal are as under :

3. It was the case of the appellants that their son Sunil Gangaram Doiphode was mainly employed with the respondent no.1 since 2008 in the capacity of a motor dumper driver and was paid monthly salary of Rs.9,000/- per month excluding other allowances. On 10<sup>th</sup> July, 2010, as per the orders and directions of the respondent no.1, the said Sunil G. Doiphode loaded the rabbit in the dumper bearing registration No.MF-04-EB 7880 at Jawahar Nagar, Goregaon, Mumbai and unloaded the same in the business premises of the respondent no.1 at Vasant Vihar Society, Sarojini Naidu Road, Opposite B.M.C. Office, Kandivali (West), Mumbai. The said Sunil Doiphode reached at about 13.45 hours at the said

premises and unloaded the said material. After unloading the said material, the said Sunil Doiphode was getting down from the driver's cabin from cleaner's side of the dumper, as there was no room or gap near the door of driver side. While doing so, due to the dumper the live wire cut off and fell down on the dumper and the said driver received electric shock and fell down and become unconscious on the spot. He subsequently died in the Bhagwati Hospital before admission. (Hereinafter referred to as the said deceased).

4. The appellants being parents and legal heirs of the said deceased filed an application for compensation before the learned Commissioner for Workmen's Compensation & Judge, 4<sup>th</sup> Labour Court, Mumbai bearing Application (WCA) No.726/B-115 of 2010 against the respondent no.1 i.e. the employer and the respondent no.2 being insurer of the said vehicle which was driven by the said deceased during the course of his employment. The claim was made in the sum of Rs.8,95,840/- with interest thereon at 12% p.a. from the date of accident i.e. 10<sup>th</sup> July, 2020 till realization of the entire amount. The respondent no.1 employer neither appeared nor filed any written statement opposing the said application filed by the appellants. The respondent no.2 (insurer) filed a written statement before the Trial Court opposing the said claim on various grounds.

5. Learned Trial Court framed three issues for determination. The appellant no.1, father of the said deceased examined himself. He filed affidavit in lieu of examination in chief on 26<sup>th</sup> April, 2005 and

deposed as to how the said deceased died on 10<sup>th</sup> July, 2012 while on duty in an accident arising out of and during the course of his employment with the respondent no.1. The said witness also deposed that the said deceased was employed with the respondent no.1 and was being paid salary in the sum of Rs.9,000/- p.m. and other allowances by the employer. The said witness was cross-examined by the respondent no.2. The appellants also examined Shrikant Mohan Sontakke who was a cleaner. The said witness was also cross-examined by the respondent no.2.

6. The respondent no.2 did not examine any witness before the Trial Court. Learned Trial Court passed a judgment and award dated 12<sup>th</sup> October, 2012 thereby allowing the application filed by the appellants partly. The Trial Court held the respondent no.1 owner as liable to pay the compensation amount of Rs.8,95,840/- with interest at the rate of 12% p.a. from the date of adjudication till final realization of the entire compensation amount and rejected the claim for compensation against the respondent no.2. The respondent no.1 did not challenge the said judgment and award rendered by the Trial Court.

7. Mr.Mendon, learned counsel appearing for the appellants invited my attention to some of the averments made in the claim application filed by his clients, from the written statement filed by the respondent no.2 and notes of evidence led by the witnesses examined by the appellants. It is submitted by the learned counsel

that the said deceased was employed by the respondent no.1. Trial Court has rendered a finding in paragraph 8 of the impugned judgment and award that the said deceased received electric shock as the current electricity touched the wire to the dumper and as a result of the said accident, the said deceased sustained injury and succumbed thereto. He submits that these findings are not impugned by the respondent no.2 by filing any appeal.

8. It is submitted by the learned counsel that there was no dispute that the said vehicle which was driven by the said deceased was insured with the insurer respondent no.2 and thus the respondent no.2 was also liable to pay compensation to the said deceased for the accident having arisen during the course of his employment. He submits that the Trial Court however, has exonerated the respondent no.2 from paying any compensation amount to the appellants.

9. The next submission of the learned counsel for the appellants is that though the appellants had made claim for interest from the date of accident, the Trial Court while allowing the claim in the sum of Rs.8,95,840/-, has awarded interest at 12% p.a. only from the date of adjudication till final realization of the entire compensation and not from the date of accident. In support of his aforesaid submissions, learned counsel placed reliance on various judgments which would be dealt with in later part of the order.

10. Learned counsel appearing for the respondent no.2 on the other hand raises an issue of maintainability of this appeal on the ground that the appellants were not aggrieved by the decision of the Trial Court exonerating the respondent no.2 in the claim application filed by the appellants. It is submitted by the learned counsel that the appellants have already succeeded against the employer and has been awarded substantial amount of compensation by the Trial Court. The appellants have not taken any steps to execute the said part of the judgment and award rendered by the Trial Court against the respondent no.1 and thus the appellants could not have filed this appeal rejecting the claim for compensation against the respondent no.2 by the Trial Court. It is submitted that the said judgment and award passed by the Trial Court is executable against the respondent no.1.

11. The next submission of the learned counsel for the respondent no.2 is that there is no substantial question of law involved in this First Appeal. The Trial Court has rendered findings of fact and on interpretation of the policy has held that such accident would not be covered by the insurance policy issued by the respondent no.2 in favour of the respondent no.1. She submits that the scheme of section 173 of the Motor Vehicles Act, 1888 and under section 30 of the Workmen's Compensation Act, 1923 are different. She submits that under section 30 of the Workmen's Compensation Act, 1923 when an appeal is preferred by a party

aggrieved, decretal amount is required to be deposited before filing the said appeal.

12. Last submission of the learned counsel for the respondent no.2 is that the appellants though had examined two witnesses had not proved the amount of salary which was paid to the said deceased by the respondent no.1 and thus the Trial Court could not have considered compensation considering the salary of the said deceased at Rs.9,000/- per month.

13. Mr.Mendon, learned counsel for the appellants in rejoinder submits that the appellants were aggrieved by the judgment and award rendered by the Trial Court insofar as rejection of the claim against the respondent no.2 is concerned. The appellants were thus entitled to file this appeal against the respondent no.2 being an aggrieved person under section 30 of the Workmen's Compensation Act, 1923. In support of this submission, learned counsel placed reliance on the judgment of this Court rendered on 28<sup>th</sup> August, 2014 in case of **Smt.Sangita Prakash Pawar & Ors. vs. Shri Mahadeoao R. Mahadik & Ors.** in First Appeal No.1180 of 2012.

14. Insofar as the submission of the learned counsel for the respondent no.2 that the witness examined by the appellants had not proved the salary of Rs.9,000/- per month paid to the said deceased is concerned, it is submitted that the witness examined by the appellants had produced the salary certificate issued by the

respondent no.1. He submits that in any event the findings of fact rendered by the learned Trial Court being not perverse and the respondent no.2 not having impugned the findings rendered by the learned Trial Court on the quantification of salary being paid to the said deceased by the respondent no.1, the respondent no.2 cannot be allowed to challenge such finding across the bar in the appeal preferred by the appellants.

15. Learned counsel for the appellants strongly placed reliance on an unreported judgment delivered on 11<sup>th</sup> December, 2018 in case of **Mahendra Singh Tulshi Singh & Anr. vs. Gurpreet Singh Gurudev Singh & Anr.** in First Appeal No.618 of 2017 in support of the submission that the said deceased had died in the said accident arising out of and in the course of his employment and died due to electric shock due to lying wire having touched the dumper vehicle which was being driven by the said deceased, the respondent no.2 was liable to pay compensation to the appellants under section 3 of the Workmen's Compensation Act, 1923.

16. Learned counsel also placed reliance on the judgment of the Supreme Court in case of **Oriental Insurance Co. Ltd. vs. Gopali & Ors., 2012 ACJ 2126** and in particular paragraphs 3 and 6 to 13 and would submit that the Trial Court ought to have allowed interest at the rate of 12% p.a. from the date of accident and not from the date of adjudication. He submits that this part of the order passed by the Trial Court is contrary to the principles laid down by the

Supreme Court in case of **Oriental Insurance Co. Ltd.** (supra)

**REASONS AND CONCLUSION :**

17. Insofar as the issue of maintainability raised by the learned counsel for the respondent no.2 of this appeal is concerned, a perusal of the claim application filed by the appellants clearly indicates that the said application was filed by the appellants seeking compensation not only against the respondent no.1 employer but also against the respondent no.2 i.e. the insurer. It is not in dispute that the said vehicle which was driven by the said deceased was insured by the respondent no.2 under policy cover no.58683183. The liability covered under the said policy was also inclusive of basic third party liability. It was provided in the said policy that the limits of liability was under section II 1(i) of the Policy – “Death of or bodily injury”.

18. In my view, since the claim was made by the appellants against the respondent no.2 and since the Trial Court has rejected the claim against the respondent no.2, the appellants are aggrieved by that part of the judgment and award of the Trial Court and thus being aggrieved parties insofar as that part of judgment and award is concerned are entitled to file an appeal under section 30 of the Workmen’s Compensation Act, 1923. There is no merit in this submission of the learned counsel for the respondent no.2. The appeal against the respondent no.2 is maintainable.

19. Insofar as the submission of the learned counsel for the respondent no.2 that there are no substantial question of law arising in this appeal are concerned, learned counsel for the respondent no.2 does not dispute that by an order dated 20<sup>th</sup> December, 2018 passed by this Court after hearing the learned counsel for the parties had formulated substantial questions of law arising in this appeal for consideration. Be that as it may, the question whether the learned Commissioner was legally justified in exonerating the insurance company or not is substantial question of law. In my view, there is no substance in this submission made by the learned counsel for the respondent no.2. Both the parties have addressed this Court on all the substantial questions of law formulated by this Court under section 30 of the Workmen's Compensation Act, 1923.

20. Insofar as the submission of the learned counsel for the respondent no.2 that the Trial Court has rendered a finding of fact to the effect that the entire policy issued by the respondent no.2 did not include the accident suffered by the said deceased and thus no inference with such finding of fact is warranted is concerned, in my view there is no merit in this submission of the learned counsel. Trial Court in this case in paragraph 11 of the impugned judgment and award has only come to the conclusion that after minutely perusing the terms and conditions of the policy, it clearly indicated that there was an agreement between the respondent no.1 and the respondent no.2 expected the liability of the respondent no.2 to pay compensation for damages and injury caused due to the act of

vehicle accident and did not cover the incident of electric shock death or otherwise this accident.

21. Learned counsel for the respondent no.2 could not point out any such exclusion from the copy of the policy produced before this Court. It is proved beyond reasonable doubt that the said deceased was employed with the respondent no.1. Trial Court thus after considering the oral and documentary evidence has rendered a finding that the said deceased had reached the site where such material was to be unloaded. After unloading the rabbit, the said dumper was required to be unlifted. The deceased drove the dumper and unloaded the said dumper. There was no sufficient space to get down from the driver's side of the cabin. He tried to come out by that side and received shock as current dumper touched the wire to the said dumper and due to the said accident, the driver sustained injury and succumbed thereof. It is thus proved beyond reasonable doubt that when the said deceased was on his duty and died during the course of his employment.

22. The judgment of this Court in case of **Mahendra Singh Tulshi Singh & Anr.** (supra) would support the case of the appellants. This Court in the said judgment had considered a situation where the deceased was driving and was proceeding from Mumbai to Pune. He got down from the vehicle near Khargar Railway Station in order to obtain a PUC certificate. He met with an accident while he was crossing the road and expired as a result of the injuries

sustained in the said accident. The insurance company raised an issue before this Court that the said deceased had not expired during the course of employment and was not driving the said vehicle. This Court specifically rejected the said contention raised by the insurance company and held that the said deceased was though crossing the road, the said incident took place when he was in the employment of the employer and the said vehicle was insured by the insurance company. This Court rejected the plea raised by the insurance company that the said policy did not cover the risk of employee which was the claim in question. The principles of law laid down in the said judgment in case of **Mahendra Singh Tulshi Singh & Anr.** (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

23. Insofar issue of interest is concerned, a perusal of the claim application clearly indicates that the appellants had claimed interest from the date of accident till realization of the entire payment. Trial Court however, did not record any reasons as to why Trial Courts was awarding interest from the date of application and has rejected the claim for compensation from the date of accident till the date of adjudication.

24. The Supreme Court in case of **Oriental Insurance Co. Ltd.** (supra) has discussed this issue at great length while considering the issue whether interest would be payable on the amount of compensation as provided under section 4-A(3) of the

Workmen's Compensation Act, 1923 and if since what date. The Supreme Court considered sections 4-A(1) and (3) which provides for compensation to be paid when due and penalty for default respectively. The Supreme Court in that judgment declared that the decision in case of **Mubasir Ahmed, 2007 ACJ 845 (SC)** and **Mohd.Nasir, 2009 ACJ 2742** do not express the correct view and were not binding precedent. The Supreme Court in the said judgment upheld the judgment of the Commissioner for Workmen's Compensation awarding interest at the rate of 12% from the date of the accident. In my view, under section 4-A (1) and (3) of the Workmen's Compensation Act, 1923, the interest would be payable to the applicants from the date of accident and not from the date of adjudication. The judgment of the Supreme Court in case of **Oriental Insurance Co. Ltd.** (supra) would clearly apply to the facts of this case. I am respectfully bound by the said judgment.

25. In my view, the findings rendered by the Trial Court exonerating the respondent no.2 from paying compensation is perverse and contrary to the provisions of the Workmen's Compensation Act, 1923 and thus that part of the judgment deserves to be set aside. The respondent no.2 is jointly and severally liable to pay compensation to the appellants with the respondent no.1.

26. There is no substance in the submission made by the learned counsel for the respondent no.2 that the appellants having obtained the decree against the respondent no.1 ought to have

executed the said decree against the respondent no.1 first and could not have applied for decree against the respondent no.2. It is an admitted position that the said dumper owned by the respondent no.1 was insured with the respondent no.2. The appellants were entitled to make the claim not only against the employer - respondent no.1 but also against the respondent no.2, their liability being joint and several. In my view, even if the dumper involved in this accident was owned by the respondent no.1, that would not preclude the appellants from filing an appeal against the judgment and award exonerating the respondent no.2 in the claim application filed by the appellants. The appellants are entitled to seek claim against both i.e. the respondent nos.1 and 2. The respondent no.2 having exonerated, the appellants are entitled to file this appeal against the respondent no.2 also.

27. I therefore, pass the following order :-

a). Paragraph 3 of the operative part of the impugned judgment and award exonerating the respondent no.2 is set aside. It is declared that the respondent nos.1 and 2 are jointly and severally liable to pay the sum of Rs.8,95,840/- with interest at the rate of 12% p.a. from the date of accident till realization of the entire compensation amount to the appellants.

b). The impugned judgment and award dated 12<sup>th</sup> October, 2012 is modified to this extent.

c). The First Appeal is disposed of in aforesaid terms. There shall be no order as to costs.

d). The respondent no.2 is directed to pay the decretal amount as modified by this Court to the appellants within four weeks from today.

e). Office is directed to transmit the record and proceedings of the Application (WCA) No.726-B-115 of 2010 to the learned Commissioner for Workmen's Compensation & Judge, 4<sup>th</sup> Labour Court, Mumbai expeditiously.

f). All parties as well as Trial Court to act on the authenticated copy of this order.

***(R.D. DHANUKA, J.)***