IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.1956 OF 2019
IN
FIRST APPEAL ST. NO.32327 OF 2018

Rehmatulla Shamir Sayyad ..Applicant

Vs.

Branch Manager,
United India Insurance Company Ltd.
Infront of Gorakshan, Main Road,
Latur and ors. ..Respondents

Mr.F.K.Patel, Advocate for applicant
Mr.V.R.Mundada, Advocate for respondent no.1

CORAM : R.G. AVACHAT, J.
RESERVED ON : AUGUST 04, 2021
PRONOUNCED ON : AUGUST 17, 2021

ORDER :-

This is an application for withdrawal of amount of compensation deposited in the Court of the Commissioner under the Employee's Compensation Act.

2. The applicant had preferred an application for compensation under the Employee's Compensation Act, 1923, on the ground of suffering permanent disability as a result of the injury suffered during the course of employment. Learned Commissioner

under the Employee's Compensation Act, allowed the application granting compensation amount of Rs.9,98,304/- with interest @ 12% per annum from the date of accident till the date of depositing said amount in Court.

3. It was the case of the applicant that he was working as a Cleaner on the truck bearing registration no MH-43-U-1392 owned by respondent no.1, before learned Commissioner. The United India Insurance Company Ltd. had granted insurance cover to the said truck. It is the case of the applicant that the driver of the truck had asked him to spread tarpaulin sheet on the truck. When he was engaged in the said work, he, accidentally, fell from the truck. His hand was fractured. Learned Commissioner, on appreciation of the evidence in the case, held the applicant to have suffered permanent total disablement and therefore, granted compensation.

4. The insurance company has preferred an appeal along with application for condonation of delay. The delay has not yet been condoned. It is the case of the appellant - insurance company that the vehicle was originally owned by respondent no.3 (in the application for compensation). It appears that respondent no.3 transferred said truck to respondent no.1 (in the application for

compensation). The applicant is not a third party. The insurance company did not have contract with respondent no.1 to indemnify any of his employees suffering injury in the course of employment. Learned counsel for the insurance company would also submit that the compensation awarded has been on higher side. The applicant claimed to have been serving on monthly pay of Rs.6,000/- per month. Learned Commissioner has, however, assumed it at Rs.8,000/- per month and awarded compensation. It was a collusive claim. Respondent no.1-owner of truck admitted the claim made in the application. Learned counsel for the insurance company, therefore, opposed the application for grant of withdrawal of amount of compensation.

5. The truck (bearing registration no.MH-43-U-1392) originally belonged to respondent no.3 in the application before learned Commissioner. It was the contract of the insurance between said respondent no.3 and the insurance company. True, the applicant is not a third party. Respondent no.3 transferred the vehicle to respondent no.1. In the case of **Rikhi Ram and anr. Vs. Sukhrania (Smt) and ors., (2003)3 SCC 97**, a three-Judge Bench of Hon'ble Supreme Court held :-

> " Motor Vehicles - Motor Vehicles Act, 1939, Ss.94, 95 and 103-A - Third-party risk - Transfer of vehicle covered by an insurance policy - Liability of insurer - Held, does not cease even if the owner or purchaser does not give any intimation of transfer of vehicle to the insurance company - Various legislations enacted in England to protect the rights and interests of the third party, and which were also followed while enactment of Chapter VIII of the Motor Vehicles, 1939......"

6. In the present case, learned Commissioner, on appreciating the entire evidence, has awarded compensation. Delay in preferring the appeal has not yet been condoned. True, it appears that the quantum of compensation is on higher side. The applicant had suffered fracture of his hand. The hand was operated upon implanting a rod therein. It will take a considerable time to hear the appeal, if the application for condonation of delay is allowed.

7. Section 157(1) of Motor Vehicles Act reads thus :-

> **157. Transfer of certificate of insurance**.—
>
> (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been

> transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.
>
> Explanation.—For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

Explanation to Section 157 (1) above, speaks that the transferee would inherit all rights and liabilities of the certificate of insurance and policy of insurance, meaning thereby, respondent no.1 to whom the vehicle was transferred, is entitled to have indemnification of the amount of compensation awarded by the commissioner.

8. In the the fitness of things, it is desirable to permit the applicant to withdraw 50% of the amount of compensation deposited in this Court.

9. Hence, the order:-

(i) The applicant is permitted to withdraw 50% of the amount deposited with interest accrued thereon, on furnishing usual undertaking.

(ii) The application stands disposed of accordingly.

[**R.G. AVACHAT, J.**]

KBP