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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 732 OF 2018
WITH
CIVIL APPLICATION NO. 2180 OF 2018
IN
FIRST APPEAL NO. 732 OF 2018**

Tata AIG General Insurance CompanyApplicant
Limited

V/s.

Shri. Sudhakar Ramdas Deshmane and anotherRespondents

**WITH
INTERIM APPLICATION NO. 2760 OF 2020
IN
FIRST APPEAL NO. 732 OF 2018**

Shri. Sudhakar Ramdas DeshmaneApplicant

V/s.

Tata AIG General InsuranceRespondents
Co. Ltd. And another

Mr. Devendra Joshi for appellant and applicant in CAF and for
Respondent in IA

Mr. Tejesh Dande a/w Bharat Gadhvi I/B Tejesh Dande & Associates
for Respondent no. 1 in FA and for Applicant in IA

CORAM : NITIN W. SAMBRE, J.

DATE: JULY 14, 2021.

P.C.:

1] In view of the rival claims of the parties, on 14/1/2021, this Court, while dealing with the prayer of the claimant for withdrawal of compensation deposited by the Appellant/Insurance Company, noted that appeal itself can be taken up for final disposal by formulating questions of law.

2] In the aforesaid backdrop, appeal is taken up on final hearing board and heard finally by consent of parties.

3] Impugned in the appeal is an award delivered by the Commissioner for Employees' Compensation and the Judge, First Labour Court, Nashik in Application W.C. (NF) No.21 of 2014. Appellant and the Employer were jointly and severally directed to pay Rs 9,09,888/- as compensation with interest @ 12% per annum with effect from 21/9/2013. The Appellant was also directed to pay penalty of 50% of the compensation amount.

4] The facts necessary for deciding the present appeal are, while working as a driver with the Respondent-Employer, claimant was drawing wages of Rs 8,000/- per month. The Employer was an owner of the Truck bearing No MH-15-DK-8595, which was insured with the Appellant. On 21/9/2013, claimant met with an accident during the course of his employment as a driver on the aforesaid Truck, resulting into sustaining serious injury to his right leg (compound fracture) and other bodily injuries. As a consequence, he could not walk properly. After the accident, offence punishable under Sections 279, 337, 338, 304-A, 427 of IPC and under Section 184 of the Motor Vehicles Act came to be registered. Based on the aforesaid claim, petition was moved which is allowed vide impugned order.

5] While questioning the order impugned, the first issue which is sought to be raised by the learned Counsel for the Appellant-Insurance Company in the form of question of law is, “whether in the absence of valid license, claimant was entitled to claim compensation as the same is in breach of the policy of the Appellant”. So as to buttress the aforesaid argument, Mr. Joshi, the learned Counsel for the Appellant would invite attention of this Court to the fact that claimant’s license was initially valid up to 20/9/2014 and

thereafter same was renewed from 4/3/2015 till 3/3/2018. That being so, according to him, on the date of the accident i.e. on 21/9/2013, the claimant was not holding valid license. The second issue as has been raised in the form of question of law is, “whether the claimant has suffered any loss of earning.” The third question of law referred is, “whether there was an employer-employee relationship.”

6] As far as the question of law in relation to valid driving license is concerned, neither the said issue was raised during the proceedings before the Commissioner when the impugned judgment/award was delivered nor any documentary evidence to that effect is brought before this Court under the provisions of Order 41 Rule 27 of the CPC. The vague claim appears to have been raised by the Appellant at this stage of the proceedings. In absence of any material but for the words of the learned Counsel for the Appellant to substantiate the said claim such contention cannot be even looked into. Apart from the fact that the said contentions cannot be accepted in the absence of any pleadings and evidence to that effect, the said ground was verymuch available to the Appellant when the claim petition was decided, however same was never pleaded by the Appellant before the court below. As such, said contentions are rejected.

7] So far as the issue of loss of earning capacity is concerned, the Tribunal has specifically dealt with the evidence of the claimant at Exh.U-16 and the expert witness Dr. Gauttam Keshav Silwant at Exh. U-25. The fact remains that the Appellant has not cross-examined the said doctor. The age of the claimant was certified from his School Leaving Certificate produced at Exh. U-18. The other documents such as disability certificate at Exh.U-20, medical bills at Exh. U-21, copy of the driving licene at Exh. U-25 and the police papers in relation to the accident at Exh. U-26 and U-27 were duly taken into account. The employer in his Written Statement though denied the claim, has admitted employer-employee relationship, so also monthly pay of the claimant of Rs 8000/-

8] As such, the Tribunal has rightly considered the age of the claimant as 38 years and per month earning of Rs 8000/-. The evidence of Dr. Gauttam to the extent of claimant having 25% disability, resulting into 100% loss of earning capacity. As a consequence of the injury suffered by the claimant, he has established that he is not in position to perform the similar job. He was also certified to be unable to walk properly.

9] In my opinion, no question of law is involved in the present of appeal. As such, appeal fails and same stands dismissed.

10] As a consequence of above, Civil Application No.2180 of 2018 filed by the Appellant for grant of interim relief stands rejected. However, Interim Application No.2760 of 2020 filed by the claimant for withdrawal of the entire compensation amount is allowed. It shall be open for the claimant to withdraw the amount of compensation with accrued interest thereon deposited before the Commissioner for Employees' Compensation & the Judge, First Labour Court, Nashik on furnishing the usual undertaking.

11] The said Civil Application and Interim Application are accordingly also disposed of.

[NITIN W. SAMBRE, J.]