

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.440 OF 2022

(ICICI Lombard General Insurance Co. Ltd. Vs. Ankush s/o Ulhas Donadkar & anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.P. Bhuihar, Advocate for the appellant.

CORAM : M.S. KARNIK, J.

DATED : APRIL 28, 2022.

Heard learned counsel for the appellant.

2. This is an appeal by the appellant – ICICI Lombard General Insurance Co. Ltd. seeks to challenge an order dated 10/01/2022 passed by the Commissioner (hereinafter referred to as ‘the Labour Court’) under the Employees Compensation Act, 1923 (hereinafter referred to as ‘the Act’) thereby partly allowing the application filed by the respondent – employee. The Appellant is directed to pay compensation of Rs.10,75,200/- (Rs. Ten lakh seventy five thousand two hundred only) jointly and severally to the applicant along with the employer with interest @ 12% per annum from the date of accident i.e. 06/11/2013 till actual realisation.

3. Further respondent No.2-Employer was directed to pay Rs.1,00,000/- (Rupees One lakh only) to the claimant towards penalty as per Section 4-A(3)(b) of the Act.

4. The victim-employee was in employment of respondent No.2-Employer. Shri Bhuihar, learned counsel appearing on behalf of the appellant, assailing

the order of the Labour Court submitted that the present appeal raises the following substantial question of law as contemplated under Section 30 of the Act. The substantial questions of law which according to him arise for consideration are:

i) Whether the learned Commissioner under the Act of 1923 misdirected itself in law in holding that the employer-employee relationship existed between the respondent no.2 and the injured when the accident in question took place?

ii) Whether the finding regarding filing of First Information Report about the accident in question not being a condition precedent is based purely on the conjectures and surmises and therefore can be castigated as perverse?

5. Shri Bhuibhar, learned counsel was at pains to point out that the Labour Court was not justified in arriving at a finding that there exists an employer-employee relationship. He submits that there is no cogent material on record placed by respondent No.1 – claimant to establish this contention. It is next contended by Shri Bhuibhar, that on the alleged date of the accident, there is nothing on record to show that respondent No.1 was driving the tractor. It is further contended that in respect of the incident there is no F.I.R. lodged which itself is a sufficient ground to deny the claim of the claimant. According to him, absence of FIR creates a doubt about the incident in question. It is further submitted that the evidence on record falls short to support the finding of permanent disability which allegedly resulted from driving the tractor.

6. I have carefully gone through the findings recorded by the Labour Court. The accident in question took place on 06/11/2013. Respondent No.1 – employee examined himself. He deposed that he was working in the agricultural field of respondent No.2 where he sustained injury to his right hand while driving the tractor. It is the case of the employee that his hand got stuck in the steering wheel and his right hand was amputated below the elbow joint. He thus claimed that this was an accident which occurred during the course of his employment with respondent No.2. Respondent No.2 admitted that he is the owner of the tractor and that the said tractor was insured with the appellant - Insurance Company.

7. Respondent No.2 – employer does not deny that the respondent No.1-employee was working with him. The Labour Court relied upon the evidence of AW-2 – Rajendra, who was going to the field of his brother-in-law for attending pooja. He was proceeding from the road adjoining the field of the employer where the claimant was working. Upon hearing hue and cry of the employee, AW-2 found that the employee was lying on the land near the tractor and rota-vector machine. He saw that the hand of the employee sustained serious injury and that it was dislocated. Rajendra picked up the right hand of the employee and tied the dupatta on his hand whereupon he took him to the hospital. There is medical evidence on record indicating that the right hand below the elbow joint was amputated.

8. I have gone through the findings recorded by

the Labour Court. Upon considering all the materials and the documents on record, the Labour Court found that the employee sustained severe injuries on 06/11/2013 in an accident arising out of and during the course of employment with the employer. Further on the basis of the medical evidence on record, the Labour Court came to the conclusion that the employee sustained loss of earning capacity to the extent of 100% permanent disablement. The evidence on record clearly establishes an employer-employee relationship and that on the relevant date the employee was engaged by respondent No.2(employer). The accident has arisen in the course of and under the employment of respondent No.1 (employer). There is no reason to disbelieve the version of Rajendra.

9. I do not find any perversity in the well considered findings recorded by the Labour Court which are based on a proper appreciation of the evidence on record. In my opinion, the present appeal does not involve any substantial question of law.

10. The appeal is dismissed with no order as to costs.

(M.S. KARNIK, J.)

**DB*