

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 326 OF 2004

Tajoddin s/o Nabilal @ Nawabsab Shaikh
Age 18 years, occ. Presently nil.
R/o. Bhisewagholi Tq. & Dist. Latur.

... Appellant

Versus

1. S.R. Kombde
Age 45 years, occ. Business
R/o. Azam Ganj Ganj golai, Latur,
Tq. Latur & Dist. Latur.
**(As per Registrar's Court's order dated
1.2.2005 appeal abated as against
Respondent No.1)**

2. Branch Manager,
Oriental Insurance Company Ltd.,
In front of Bus Stand, Latur

...Respondents

Mr C.C. Deshpande, Advocate for Appellant
Respondent No.1 abated
Mr V.N. Upadhye, Advocate for Respondent No. 2

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 10-02-2023

PRONOUNCED ON : 20-02-2023

JUDGMENT :

1. The present appeal is filed under Section 30 of workmen's compensation Act seeking enhancement of compensation. The learned Commissioner for Workmen's Compensation / Labour Judge at Latur has passed the judgment and award dated 19-06-2000 in WCA NO.37/1998 in favour of applicant, thereby granting compensation of Rs. 1,37,124/- along with interest @ 12% per annum from the date of accident. i.e. 27-01-1998.

2. The appellant / applicant had approached the Commissioner for

Employees Compensation / Labour Judge at Latur, contending that he was employed on the truck No. MH-24-A-2220 owned by the opponent on wages of Rs.2,000/- per month. On 27-01-1998 at about 10.00 p.m., he removed the stone support of the tyres, suddenly, the truck rolled and crushed the left foot, consequently, applicant suffered permanent disablement and loss of earning capacity. The claim was contested by employer / owner of vehicle as well as insurer. The learned Commissioner after hearing, partly allowed the claim and passed an award of Rs.1,37,124/- along with interest @ 12 % per annum.

3. The notice of appeal was issued to the respondents. The bailiff report dated 17-04-2004 received with remark that "respondent No.1 / employer is dead". No steps were taken in appeal for bringing legal heirs of the deceased / respondent No.1 on record of the appeal. The learned Registrar (Judicial) of this Court passed an order dated 01-02-2005 regarding abatement of appeal against the respondent No.1. Even thereafter, no steps are taken for setting aside the order of abatement of appeal or bringing legal heirs of respondent No.1 on record.

4. Since the appellant is seeking enhancement of the compensation in claim filed under Workmen's Compensation Act, the primary liability to pay the compensation would rest upon the employer /owner of the vehicle. The claim against the respondent No.1 / owner of the vehicle has been abated long back in the year 2005. No steps are taken for almost 18 years.

5. The learned advocate appearing for the appellant could not bring on record any material to show that in absence of employer/owner of the vehicle, the appeal seeking enhancement of compensation can be entertained against the insurer of the truck. The Supreme Court of India in the matter of ***Oriental Insurance Company Ltd., Vs. Sunita Rathi and others reported in 1998 SC 4761*** has laid down that no award can be passed against the insurer in absence of owner of the insured vehicle being the party. It is the trite that insured / employer is entitle to be indemnified against his liability towards specified employees of insured vehicle, during currency of the insurance policy in terms of Section 147 of Motor Vehicles Act, 1988. The insurer has no independent liability towards employees engaged on insured vehicle under statutory scheme. In that view of the matter, the appeal cannot be independently entertained against the respondent No. 2 / insurer in view of abatement of the appeal against the respondent No.1 / employer owner of the vehicle.

Hence, the appeal is dismissed with no order as to costs.

[S.G. CHAPALGAONKAR, J.]

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