

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

13 WRIT PETITION NO.8204 OF 2013

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.
VERSUS
ARJUBANO SHAIKH JAKIR AND OTHERS

...
Advocate for Petitioner : Mr. Rohit H. Dahat

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 14-02-2023

PER COURT :

. The challenge in the petition is to the order dated 01.02.2013 passed by the Civil Judge Senior Division and Commissioner for Workmens Compensation, Hingoli below Exh.51 in Fatal Accident Case No.21 of 2008 whereby the respondents application for examining the Divisional Manager of the petitioner – Insurance Company, Nagpur came to be allowed.

2. The Fatal Accident Case No.21 of 2008 was filed by the wife and sons - claimants of the deceased cleaner of Trailer bearing no.MH-31-CB-6765. As it was the fatal accident claim, the claimants impleaded the petitioner company as one of the party in the capacity as insurer of the said vehicle. During the evidence below Exh.49, a document was sought to be produced claiming to be a cover note. The petitioner - Insurance Company examined its Legal Manager

below Exh.51 wherein the Legal Manager stated that the said document below Exh.49 is not a cover note, but merely a quotation. Considering the evidence on record, the respondents – claimants sought issuance of the witness summons to the Divisional Manager, Nagpur.

3. The learned counsel appearing for the petitioner submits that there is no post of Divisional Manager in the petitioner - Insurance Company. He further submits that the legal manager has deposed in respect of the documents below Exh.49 and there is no necessity for further issuance of witness summons to any other officer of the petitioner - Insurance Company.

4. Considered the submissions of the learned counsel for the petitioner.

5. Although an appearance has been caused on behalf of the respondent nos.1 to 3, none appears for the respondents.

6. Considering that this is a fatal accident case and the document in issue about which a dispute has been raised as to whether the said document is a cover note or a quotation, the

concerned officer of the petitioner - Insurance Company would be better equipped to lead evidence and prove that the said document is a quotation.

7. A perusal of the cross-examination of the Legal Manager shows that the Legal Manager has admitted that he is not aware as to the Officer who has issued the document below Exh.49 and he has not taken any information in this regard from Nagpur Office. The contention raised before this Court that there is no post of the Divisional Manager in the petitioner – Company was not a contention raised before the Civil Judge Senior Division and as such the impugned order dated 01.02.2013 could not be faulted with. However, considering the submissions that there is no Divisional Manager in the petitioner company, no useful purpose would be served by upholding the order dated 01.02.2013 and it would be in the interest of justice to mould the order and direct the petitioner company to file an application stating the appropriate officer of the petitioner – company from Nagpur who will depose as regards the document below Exh.49.

8. Let such an application be filed before the Civil Judge Senior Division, Hingoli on the next date of hearing i.e. on

09.03.2023 and examination of the concerned officer be conducted within a period of two weeks thereafter.

9. Writ petition stands disposed of in the above terms.

10. The trial Court is directed to decide the Fatal Accident Case No.21 of 2008 within a period of six months from today.

(SHARMILA U. DESHMUKH, J.)

GGP