Uday S. Jagtap

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 510 OF 2013

Bhagwat Mandash Sadu .. Appellant

Vs.

M/s. A.K. Enterprises & Anr. .. Respondents

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Mr. J.J. Mendon for the appellant
Ms. Yogita Deshmukh i/b Leges Consultus for the respondents

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CORAM : PRITHVIRAJ K. CHAVAN, J.
DATED : 30th JUNE, 2023

JUDGMENT :-

1. This is an appeal against the judgment and order dated 25th August, 2010 passed by the Commissioner for Workmen Compensation by which the application was partly allowed, directing the respondent no.1 to pay compensation of Rs.2,68,800/- along with simple interest @ 12% per annum from 3rd April, 2005 till its realization. However, the Court below dismissed the claim against the respondent no.2 insurer.

2. I heard Mr. Mendon, learned Counsel for the appellant at length. The only short issue which needs determination in this

appeal is as to whether the learned Commissioner has rightly refused to place reliance on a photostat copy of the insurance certificate Article “D”, thereby observing that since the original document has not been produced either by the applicant or by the insurer, no liability can be fasten on the applicant along with the respondent no.1? The answer is in the affirmative for the reasons to follow.

3. It is an undisputed fact that the applicant was working as a labourer with the respondent no.1 in its construction company, who met with an accident on 3rd March, 2005 as he fell down from the 7th floor within the jurisdiction of Sakinaka Police Station and sustained serious injuries i.e. L radial N. Palsy f/w and fracture SC femur and head injury and other multiple serious injuries. Ultimately he was admitted in LTMG Hospital, Sion and was discharged on 22nd March, 2005.

4. There is no dispute that at the time of his employment with the employer / respondent no.1, he was getting salary of Rs.4,000/- per month. The Commissioner has rightly observed that the labourer has suffered 100% loss of earning

5. Having framed the necessary issues, the Commissioner has answered issue no.4 that the salary of the appellant was Rs.4,000/- per month and, therefore, the amount of compensation calculated is to the tune of Rs. 2,68,800/- along with interest as above.

6. A query is made to the learned Counsel for the appellant as to why notice under Order XI Rule 16 has not been given to the insurer – respondent no.2 to produce the original insurance policy, to which learned Counsel has not given any satisfactory answer. The Commissioner also could have directed the insurer to produce the original insurance policy in view of Order XI Rule 14. Be that as it may.

7. The insurer in its written statement specifically denied that the respondent no.1 was insured with it. Even, the respondent no.1 has not established that the appellant was duly insured with the respondent no.2. The Commissioner has, therefore, rightly observed that neither the appellant nor the opposite party i.e. respondent no.1 established the fact that the appellant was duly insured. Since a photostat copy of the insurance certificate could not have been admitted and read in the evidence, the Court below

was right in placing reliance upon the same. Had there been a original policy on record, liability of the respondent no.2 would have been joint and several to that of the respondent no.1 while compensating the appellant.

8. Interestingly, in para 8 of the impugned judgment, the learned Commissioner observed that though the respondent no.2 contended in the written statement that workmen was insured with it, but it had also not filed the original insurance certificate nor any witness has been examined on its behalf to establish that the appellant was duly insured with it.

9. Having said so, I do not find any reason to interfere with the impugned judgment and order of the learned Commissioner who had directed only the respondent no.1 to pay the amount of compensation as above. The appellant is always at liberty to file execution before the appropriate authority to recover the amount from the respondent no.1.

10. Consequently, the appeal is *sans* merit and hence, is dismissed.

(PRITHVIRAJ K. CHAVAN, J.)