



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

937 WRIT PETITION NO. 6472 OF 2021

The New India Assurance Company LtdPetitioner

VERSUS

Ramdas Koutik Borse & othersRespondents

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Mr. M. R. Deshmukh, Advocate for the Petitioner.

Mr. P. C. Mayure, Advocate for Respondent Nos. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 26th NOVEMBER, 2024.

PER COURT :

1. This Petition is filed by the insurer taking exception to the order dated 24.02.2021 passed by the Commissioner of Employees Compensation and Judge Labour Court, Dhule in WCA No. 159/2015 wherein order came to be passed below Exhibit 34 rejecting the application filed by the insurer to amend pleadings in the written statement.

2. There is no dispute about the fact that an application came to be moved before the Commissioner under the Employees Compensation Act for seeking amendment to the written statement after the evidence of the parties is over. The learned Commissioner

rejected the application by observing that there is no provision like Order 6 Rule 17 of Code of Civil Procedure to amend the pleadings in the proceedings under Employees' Compensation Act. It is also held that amendment is sought at belated stage and as such it would affect the claimants adversely.

3. Learned counsel for Petitioner submits that in the written statement, the insurer denied liability of payment of any compensation to the claimants. It is his submission that amendment now sought to be incorporated is explanatory in nature. It is his submission that in any case it was open for the Petitioner to make submission about denial of liability to any extent on the basis of the contract of insurance with the employer. It is his further submission that no prejudice much less any loss will cause to the claimants if the amendment is allowed. On instructions, he makes statement that the insurer is not going to lead any further evidence in the proceedings before the Commissioner.

4. None appears for the employer to oppose the Petition. This indicates that he is not inclined to oppose the same.

5. Learned counsel for the Respondents vehemently opposed the Petition by submitting that there is no specific denial of liability of payment of compensation on the ground of the terms of the policy and by way of amendment altogether different stand is sought to be taken at the belated stage of the proceedings. It is his further submission that though on the face of it the amendment is directed against the employer, infact the claimants are likely to be affected by such amendment.

6. There cannot be any dispute about the fact that though Order 6 Rule 17 of Code of Civil Procedure has no application to the proceedings before the Commissioner, however, the principles analogous to the amendment to the pleadings would certainly apply to the said proceeding. In an appropriate case, if the parties are not permitted to amend the pleadings, the same would lead to causing of miscarriage of justice and which is never contemplated by the legislature.

7. As far as present case is concerned, there is denial of liability of payment of compensation by the insurer. By way of amendment, what is sought to be contended is that having regard to

the insurance policy and the terms of the policy, there is no liability by the insurer to pay compensation. This Court finds substance in the contention of learned counsel for Petitioner that amendment is explanatory in nature.

8. Ideally, amendment ought to have been carried out in the pleadings before commencement of evidence. In any case, if amendment is sought thereafter, the same deserves to be allowed by imposing appropriate cost. Having regard to the facts of the case, imposition of cost of Rs. 10,000/- would meet the ends of justice.

9. In view of above more particularly in view of statement made by the insurer that no further evidence would be adduced before the Commissioner, Petition stands allowed. Application Exhibit 34 filed before the Commissioner is allowed. Amendment be carried out on the next date of hearing. The Commissioner is directed to decide the proceeding within a period of three months from today. Payment of cost to the claimants would be precondition for permitting amendment.

(R. M. JOSHI)
Judge