



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

**FIRST APPEAL NO. 1731 OF 2015
WITH
CIVIL APPLICATION NO. 9602 OF 2014
IN FA/1731/2015**

ICICI Lombard General Insurance
Company Ltd.
Through its Legal Officer,
Mr. Rahul Sanap
Age: 29 years, Occ. Service,
R/o: c/o ICICI Lombard General
Insurance Company Ltd.
Alakanda, 1st Floor, Adalat Road,
Aurangabad.

... Appellant
(Ori. Resp. No.2)

Versus

1) Balwant s/o Laxmanrao Deng
Age 22 years, Occu: Driver
R/o Javalga Mesai Tq. Tuljapur
Dist. Osmanabad

(Original Claimant)

2) Mahaveer Fleet Operators Pvt Ltd
Tupe Vasti post Urulikanchan
Tq Haveli Dist. Pune
Owner of truck No. MH-12-FC-7058

(Original Resp No.1)
... Respondents

...
Mr. Rohit H. Dahat And Mr. Swapnil S. Patil, Advocate for Appellant
Mr. Sushant B. Choudhari, Advocate for Respondent No.1
Mr. Suresh N. Rodge, Advocate for Respondent No.2

...
**CORAM : NITIN B. SURYAWANSHI, J.
DATE : 25th JULY, 2024**

ORAL JUDGMENT :

1. Heard.
2. Admit. Taken up for final hearing with the consent of the parties.
3. This appeal filed by the Insurance Company under section 30 of the Workmen's Compensation Act, 1923, takes

exception to the judgment and order dated 18/11/2013, passed by learned Commissioner for Employees Compensation and Civil Judge, Senior Division, Osmanabad, in W.C.A. No.34/2011.

4. Respondent No.1 claimant was working as driver on goods truck bearing No.MH-12-FC-7058, owned by respondent No.2 employer/owner. Said truck was insured with appellant Insurance Company. On 05/03/2011, said truck met with an accident on National Highway No.9 (Solapur – Pune), within the local jurisdiction of Indapur Police Station. C.R. No.67/2011 is registered against the driver of truck bearing No.MH-04-EL-8058, which had given dash to the truck driven by claimant. In the accident, claimant sustained multiple grievous injuries including fracture of right leg and right shoulder. He was first treated at Raut Accident Hospital, Indapur, Dist. Pune, and then was shifted to Kothadia Nursing Home, Solapur, and was operated twice. Rod was fixed in his leg. He was indoor patient till 28/04/2011. He spent Rs.3,00,000/- to Rs.4,00,000/- for medical treatment and he would need future medical treatments. He was 22 years old at the time of accident and was getting salary of Rs.6,000/- per month. Employer/owner did not pay compensation. Hence, he filed claim application for compensation.

5. Respondent No.2 employer/owner of the truck opposed the claim by filing written statement. He claimed that the truck was insured with Insurance Company, which is liable to pay the compensation, if any.

6. Insurance Company opposed the claim by filing written statement, contending that accident is outcome of collision of trucks. The driver, owner and Insurance Company of Truck No. MH-04-EL-8058 are not made party to the claim petition and possibility of contributory negligence cannot be ruled out. Also, the driver was not possessing valid driving license at the relevant time. It, therefore, denied liability to pay the compensation.

7. Learned Commissioner after hearing the parties allowed the claim, thereby directing owner/employer and Insurance Company to jointly and severally pay compensation of Rs.16,50,308/- to claimant, along with interest @ 12% per annum and directed owner/employer to pay penalty of Rs.8,25,154/-. By this appeal Insurance Company has challenged the quantum of compensation awarded by learned Commissioner.

8. Heard learned advocate for appellant, learned advocate for respondent No.1 and learned advocate for respondent No.2. Perused the record.

9. Learned advocate for appellant Insurance Company has placed reliance on the notification dated 31/05/2010, issued by the Ministry of Labour and Employment of the Government of India, whereby Rs.8,000/- is fixed as monthly wages of a workman, with effect from the date of publication of said notification in the official gazette. While deciding the claim learned Commissioner has taken the salary of claimant at Rs.9,000/-. Though initially salary was

assessed at Rs.8,000/-, it appears that subsequently by way of amendment Rs.9,000/- salary is assessed, which is apparently contrary to the said notification. Therefore, calculations arrived at by learned Commissioner by assessing salary at Rs.9,000/-, needs to be corrected. Another point of address by learned advocate for Insurance Company is that, when the total disability of claimant is assessed at 100%, there was no reason for learned Commissioner to award compensation of Rs.32,000/-, under the head, loss of salary.

10. Learned Commissioner has held that claimant is unable to walk without walker and therefore, he has met with 100% permanent disability. Also, now he cannot drive goods truck. In this view of the matter, since 100% disability of claimant is assessed by learned Commissioner and compensation is accordingly calculated, learned Commissioner has erred in awarding compensation for loss of salary.

11. In view of the notification dated 31/05/2010, salary of claimant needs to be assessed at Rs.8,000/- per month and accordingly the calculations will have to be made.

12. In the light of aforestated facts, claimant shall be entitled for following compensation:-

Sr. No.	Particulars	Amount
1.	60% of monthly wages (Rs.8,000 x 60%)	Rs.4,800/-
2.	Wages after applying multiplier of 221.37 (Rs.4,800/- x 221.37)	Rs.10,62,576/-
3.	Hospitalization Charges	Rs.1,87,721/-

4.	Medicine	Rs.1,72,721/-
5.	Blood Charges	Rs.7,530/-
6.	Anesthesia	Rs.1,500/-
7.	Consultation Charges	Rs.450/-
8.	Further Medical Treatment	Rs.50,000/-
	Total Compensation	Rs.14,82,498/-

13. In the result, following order,

ORDER

- (I) First Appeal is allowed.
- (II) Claimant is held entitled for compensation of Rs.14,82,498/-.
- (III) From the amount of compensation deposited by appellant Insurance Company, claimant shall be entitled to withdraw amount of Rs.3,82,498/- along with proportionate interest. Remaining amount shall be remitted back to appellant Insurance Company.
- (IV) Employer/owner shall be liable to pay penalty of Rs.4,12,577/- along with proportionate interest.
- (V) If the penalty amount is deposited by employer/owner, claimant shall be entitled to withdraw the same along with accrued interest.
- (VI) In case the owner has not deposited the penalty amount, claimant shall be entitled to recover the same from owner.
- (VII) Civil Application No.9602/2014 stands disposed of.

(NITIN B. SURYAWANSHI, J.)