IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.6751 OF 2024
IN
FIRST APPEAL NO.389 OF 2024

Anil Sitaram Gurav c/o Kamgar Aghadi Union ... Applicant.

In the matter between:

The New India Assurance Co. Ltd., Mumbai ... Appellant.

Versus

Anil Sitaram Gurav c/o Kamgar Aghadi Union and Ors. ... Respondents.

Mr.Niraj Prajapati for the Applicant.
Mr. Devendranath S. Joshi for the Appellant-Insurance Co.
Mr. A.V. Shaikh, for Respondent No.2.

Coram : Sharmila U. Deshmukh, J.
Date : February 20, 2025

P. C. :

1. Interim Application has been preferred by the Applicant original claimant seeking withdrawal of the amount which has been deposited by the Respondent-Insurance Company.

2. Learned counsel appearing for the Applicant would submit that the Commissioner for Employees Compensation had granted compensation of Rs.6,31,000/- alongwith interest and the Insurance Company has deposited sum of Rs.9,45,058/- in the Labour Court under protest. He would further submit that during the accident, the Applicant was painting the outer wall of the Society from where he fell and sustained fracture in his right hand and leg and other injuries. He would further submit that the Applicant was engaged in the work of painting and due to the accident, he has lost 100% earning capacity.

3. Learned counsel appearing for the Respondent-Insurance Company would submit that the employer-employee relationship has not been established. He submits that the attendance card produced by the Applicant would show that the Applicant is not an employee and may be a contractor who was engaged for the work of painting. He would further submit that even otherwise, the Insurance Company is not liable for payment of penalty and interest and therefore the Application should be dismissed. He would further submit that no compensation is payable as there is no loss of earning capacity, as the evidence of the Doctor examined would show that all fracture had healed and therefore, there is no disablement.

4. Learned counsel for the Respondent No.2 would submit that Respondent No.2 has admitted the employer-employee relationship and has paid the penalty amount and therefore, Respondent No.2 do not have any liability.

5. The Commissioner for Employees Compensation after examining the evidence on record has come to a categorical finding that the accident had taken place during the course of the employment and had held the Opponent No.1 and the Insurance Company jointly and severally liable for payment of compensation. As of today, the judgment has not been disturbed and the First Appeal being of the year 2024 is not likely to be taken up for hearing in immediate future. The fact that the Applicant had met with an accident on 26th June, 2019 cannot be disputed and the only issue which will arise is whether the liability is of the Insurance Company or the Respondent No.2-Employer, as the contention of the Insurance Company is that the Applicant is engaged as a Contractor for the purpose of the work of painting and hence, there is no employer-employee relationship.

6. At this stage, *prima facie*, from the evidence on record, it appears that the Applicant was carrying out the work of painting for the Respondent No.2-Employer and has met with an accident in the course of the employment. Further, whether the Applicant has suffered 100% loss of earning capacity can be adjudicated only after the entire evidence has been scrutinized. The Commissioner for Employees Compensation has considered the disability to be a permanent partial disablement and has accordingly quantified the compensation. At this stage, the balance of convenience is in favour of the Applicant, and he has made out a *prima facie* case for grant of compensation. However, considering that in event the Appellant succeeds, the Respondents-Claimants would be liable to reimburse the amount, it would be appropriate if the Respondent is permitted to withdraw 50% of the compensation i.e.50% out of Rs.6,31,000/-, upon an undertaking being given that in event, the Appeal succeeds, he will reimburse the amount to the Insurance Company. The undertaking to be filed within a period of two weeks before the Labour Court. Upon the undertaking being filed, the Applicant is permitted to withdraw 50% out of Rs.6,31,000/- deposited in the Labour Court.

7. Interim Application is allowed in the above terms.

8. List the First Appeal on **6th March, 2025**.

[Sharmila U. Deshmukh, J.]