

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1367 OF 2024.

Cholamandal Ms General Insurance Co. Ltd.

...Appellant.

Versus

Shri. Lal Shankar Shitla Prasad Yadav And Anr.

...Respondents.

Adv. Nitesh V Bhutekar a/w Adv. Prathamesh Mandlik for the Appellant.
Mr. T. J. Mendon for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : January 28, 2025.

P. C. :

1. The Appeal has been preferred by the Insurance Company against the Judgment and Award of the Commissioner for Employees Compensation and Tenth Labour Court, Mumbai dated 5th October, 2023 partly allowing the Application and directing the Opponent and Insurance Company jointly and severally to deposit an amount of Rs. 8,16,165/- alongwith interest on the said amount.

2. The facts of the case are that an Application came to be filed by the Respondent No. 1 claiming compensation contending that on 4th January, 2021 when he was proceeding towards Mumbai Pune express highway driving the vehicle of his employer bearing No. MH-43 Y-6852, the vehicle colluded with an unknown vehicle in which he sustained severe injuries. After the accident he was taken to MGM

hospital and admitted from 4th January, 2021 till 25th January, 2021. It was contended that he had suffered 100% loss of earning capacity and claimed compensation of Rs. 16,32,330/- plus medical bills of Rs. 1 lakh.

3. The Respondent No. 2 herein Opponent No. 1 therein, admitted the employer-employee relationship and the accident of 4th January, 2021. He denied that the salary was Rs. 16,000/- p.m. but claimed that the salary was Rs. 15000/-. The Insurance Company filed their written statement and denied the accident as well as the employer-employee relationship between the Respondent Nos. 1 and Respondent No. 2. The Trial Court after considering the evidence of the Applicant and Dr. Naresh Khanna who was witness No. 2 and the evidence of the Insurance Company, partly allowed the Application.

4. On the issue of the employer-employee relationship the Trial Court noted that the relationship of employer-employee has been admitted by the Respondent No. 2 and no material has been brought on record by the Insurance Company to prove absence of the relationship. The Trial Court further noted that the police papers and the copy of FIR shows that the accident was taken place and the Applicant was driving the said vehicle which was a goods carrier and therefore held that the denial of the employer-employee relationship had no substance or basis. On the aspect of the loss of earning capacity the Trial Court noted that the contention of the Applicant that he was

drawing salary of Rs. 16,000/- whereas Respondent No. 2 contended that the salary was Rs. 15,000/- and the Insurance Company claimed that the salary of the Applicant was Rs. 8,000/- p.m. The Trial Court has noted the statement of the Applicant that the person from Insurance Company had come for inquiry and he had narrated about the incident and given statement in writing as to how the accident occurred. The Trial Court noted that the document shows the fact about the accident taking place as also the wages. Based on the evidence on record, the Trial Court held that the Applicant was earning Rs. 15,000/-

5. On the issue as to loss of earning capacity the Trial Court noted the evidence of the doctor and the disability certificate marked as exhibit U-20 who had assessed the disability at 72%. The Trial Court noted that the Applicant has sustained fracture to his right leg and opined that the loss of earning capacity is 50% and therefore awarded compensation accordingly.

6. Learned Counsel appearing for the Applicant would submit that the salary was not established and there is no document to show that the Applicant was earning a sum of Rs. 15,000/-. He would further submit that there is no material to demonstrate the loss of earning capacity and the only injury which was sustained was fracture and therefore there is no loss of earning capacity. He submits that substantial question of law is whether the evidence on record

establishes that the Respondent No. 1 was operating the vehicle at the time of accident and that the accident did occur within the scope of employment. He submits that the occurrence of the accident itself is denied by the Insurance Company, which is not proved from the evidence on record.

7. I have considered the submissions and perused the records.

8. Under Section 30 of the Employees Compensation Act an appeal lies to the High Court only on substantial question of law. The contention raised by the learned Counsel appearing for the Applicant is that the evidence on record does not prove the accident, the employer-employee relationship and the loss of earning capacity.

9. *Firstly* the Trial Court has considered the documents such as the FIR etc which records the occurrence of the accident. Further the own case of the Insurance Company is that the salary was Rs. 8,000/- and therefore there could not be any denial of the employer-employee relationship. Though the Applicant had claimed salary of Rs. 16,000/- the Respondent No. 2 who was the employer had contended that the salary was Rs. 15,000/-. Based on the oral evidence which was on record the Trial Court has arrived at finding of salary of Rs. 15,000/-. As far as the disability is concerned the doctor has been examined by the Applicant and from the cross examination nothing has been

demonstrated to show that there is no loss of earning capacity. The Applicant is driver and considering the injury sustained the Trial Court has held that the Applicant has sustained loss of 50% earning capacity and accordingly granted compensation.

10. The submissions raised by the learned Counsel appearing for the Applicant are submissions based on the findings of fact which has been arrived at by the Trial Court based on the evidence on record.

11. As the findings are not shown to suffer any perversity, there is no any substantial question of law in the present case. Resultantly, the First Appeal stands dismissed.

12. In view of the disposal of First Appeal, nothing survives for consideration in the pending Civil/Interim Applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]