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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.607 OF 2017

Tata AIG General Insurance Co.Ltd.

... Appellant

Versus

Mr.Raja Ramsaware Gautam And Anr.

...Respondents

Mr. Devendranath S. Joshi a/w. Mr. Pradyumna S. Thakurdesai for the Appellant.

None for the Respondents.

CORAM : JITENDRA JAIN, J.

DATED : 16 JANUARY 2026

P. C.:

1. This appeal is filed by the Insurance Company under Section 30 of the Employees Compensation Act, 1923.
2. As per Section 30, the appeal to this Court lies on substantial questions of law. Learned counsel for the appellant has pressed questions (a) to (j). The said questions read as under:

(a) Whether the trial court erred in holding that the claim application is maintainable as against the Appellant in absence of privity of contract between the Claimant Respondent No.1 and the Appellant ?

(b) Whether the trial court erred in holding that application is maintainable against the Appellant as against the clear provisions of Section 14 (1) of the Workmen's Compensation Act 1923 that the Appellant

Insurance Company is liable only when the employer becomes insolvent and in other cases, the Appellant has to indemnify the Employer after payment of compensation by him to the Employee ?

(c) Whether the trial court erred in recording a finding without evidence that the Respondent No.1 was the employee of the Respondent No.2 when the said fact was specifically disputed by the Appellant and the Respondent No.1 neither produced documentary evidence nor examined the Respondent No.2 to prove his employment ?

(d) Whether the trial court erred in holding that the Respondent No.1 was the employee of the Respondent No.2 after recording a finding of fact in paragraph No.9 that apparently there is no record regarding employer employee relationship between the Respondents?

(e) Whether the trial court erred in recording a finding that the Respondent No.1 suffered 100% loss of earning capacity when the treating doctor examined by him neither have proved the percentage of disability nor have issued disability certificate ?

(f) Whether the trial court erred in recording a finding without evidence that the Respondent No.1 suffered injuries as mentioned in discharge card issued by MGM Hospital Panvel when Dr. Abhijit Yadav from the said Hospital admitted that the said certificate is not issued by him ?

(g) disability certificate issued by Dr. Mihir Rannavare

showing disability of 55% when admittedly he has not treated the Whether the trial court erred in relying upon the Respondent No.1 and further that the treating doctor has not issued any disability certificate ?

(h) Whether the trial court erred in accepting the disability of 55% of the Respondent No.1 as per certificate of Dr. Rannavare when the said witness has admitted that he has neither treated the Respondent No.1 nor has maintained clinical notes before issuing such certificate ?

(i) Whether the trial court erred in recording a finding without evidence that the Respondent No.1 suffered disability when he has admitted in his cross-examination on 16/04/2016 that he has not got his license cancelled even on the said date which apparently shows that there is no disability suffered by the Respondent No.1 ?

j) Whether the trial court erred in recording a finding without evidence that the Respondent No.1 was serving with Respondent No.2 and was getting salary of Rs.8,000/- per month when admittedly no documentary evidence was produced on record by him to substantiate the same and further in view of his admission that neither has he given anything in writing to the Respondent No.2 about his inability to work nor has the Respondent No.2 issued anything in writing for not reporting on duty ?

3. However, learned counsel has argued only following.
4. Learned counsel stated that there is no employer-employee

relationship and therefore, the findings given by the Labour Court is erroneous. Insofar as this issue is concerned, the Labour Court in paragraph 8 and 9 has given reason that employer though made party choose not to appear and therefore that fact cannot be decided against the employee. Furthermore, the Labour Court also considered other documents like Insurance policy where the employer was shown as owner of Dumper No.MH-04-FJ-7864 by which the accident took place. The Labour Court after considering the corroborative documentary evidence has come to a conclusion that the employer-employee relationship is established. The Insurance policy is issued by the appellant itself. In view thereof, no substantial question of law arises.

5. The second issue which was argued by the learned counsel for the appellant is that the Labour Court has come to a conclusion that the employee suffered 100% loss of earning capacity. This issue is discussed in paragraph 14 and 15 of the impugned order. The employee was a driver and has suffered permanent partial disability to the extent of 55%. The Labour Court has observed that for a person to drive a dumper, physical fitness is utmost important and if person has suffered 55 % permanent disability then loss of earning capacity would be 100%. The appellant has not brought to my notice any documentary evidence to show that post the accident, the employee continued to drive the dumper. Therefore, in my view no infirmity can be attributed in the

impugned order granting 100 % loss of earning capacity, it being question of fact.

6. Learned counsel further stated that he is also pressing the determination of income. In my view, whether the income should be 'X' or 'Y is a pure question of fact and no perversity is alleged or shown to me in this regard by the learned counsel for the appellant. Therefore, even on this issue no substantial question of law arises.

7. There are no other arguments advanced by the learned counsel for the appellant on any of the other issues.

8. In view of above, no substantial questions of law arise and the appeal is dismissed. Consequently, Civil/Interim Application, if any does not survive.

[JITENDRA JAIN, J.]