(2016) 01 BOM CK 0043

In the Bombay High Court

Case No : First Appeal No. 365 of 2015

The Oriental Insurance Company Ltd. APPELLANT

Vs

Chandrakala Ramesh Sonune and Others RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 1 ALLMR 849 : (2016) 2 BCR 124 : (2016) 2 MhLJ 264

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : Mrunal Naik, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—1. In W.C.A. (F) Case No. 7 of 2008, the Commissioner for Workmen''s Compensation/Labour Court at Buldhana, has by its judgment and order dated 19.03.2013 held the appellant Insurance Company jointly and severally liable along with the respondent No. 6, the owner of the vehicle, and the employer to pay amount of compensation of Rs. 3,45,040/- to the applicants/ claimants who are the dependents of the deceased Ramesh Sukhdeo Sonune, who died in the accident on 27.12.2007. The Insurance Company is before this Court challenging the judgment and order to the extent it holds the appellant Insurance Company liable to pay the amount of compensation. On 07.04.2015, this Court condoned the delay and issued notice for final disposal of the matter on the question of jurisdiction of the labour Court to hold the appellant Insurance Company liable to pay the compensation.

In view of the fact that the notice for final disposal of the matter was issued upon framing substantial question of law, it is not necessary to issue fresh notice to the Respondent Nos. 1 to 5 who are not present before this Court.

Hence, Admit.

The learned counsel appearing for Respondent No. 6 waives service of notice.

The parties are heard on the substantial question of law.

2. In paragraph 20, the Labour Court has recorded the reasons for holding the appellant-Insurance Company liable to pay the compensation. Hence, the said paragraph is reproduced below.

"20. N.A. No. 1 has specifically stated that during the period of said accident the workers working in the N.A. No. 1 factory were insured with N.A. No. 2 and this fact is forfeited by Insurance Policy filed on record at Exh. U-30. It is the package policy for Zone-B. The Policy period is from 26.7.2007 to 25.7.2008. It means, the accident occurred during the course of and arising out of the employment of N.A. No. 1. It is also to be noted that the N.A. No. 1 did not cross examine this witness. So, the testimony of the witness Chandrakala Sonune went unchallenged and I have no ground to disbelieve the contention of applicants. Moreover, the fact about the accident of Ramesh is also supported by the Police documents filed on record at Exh. U-26 to U-29. Moreover, the applicants have filed school leaving certificate of deceased Ramesh at Exh. 31. So, without hesitation I am to hold that the deceased Ramesh was in the employment of N.A. No. 1 and he expired in an accident occurred during the course and arising out of employment of N.A. No. 1 on 27.12.2007 and his daily wages were Rs. 150/- per day being paid to him by N.A. No. 1. Therefore, I recorded my findings to issue Nos. 1 and 2 in the affirmative.

3. The Court has placed reliance upon the Insurance Policy placed on record at Exh. U-30. I have gone through the said Policy. It is a package policy for Zone-B and it covers the liability for own damage and the liability in respect of third party for which premium has been paid. The policy is in the name of one Sharda R. Barahate, at post Sanjivani Nagar, Khamgaon. It is in respect of the vehicle in question which is MH-28-N-5669, which is Bajaj Discover 125cc motor-cycle. It is valid for the period from 26.07.2007 till midnight of 25.07.2008. The accident in question occurred on 27.12.2007. The deceased was the pillion rider on the motor-cycle and the policy of insurance at Exh. U-30 does not cover the risk of pillion rider or the occupant of the vehicle. On the contrary, the policy shows that no premium is paid towards the risk of the owner/driver. It is not the Workman Compensation (General) Policy, which is available to cover the risk of employees working in the establishment of the respondent No. 6, who alleged to be the owner of the vehicle. In the absence of such policy under the Workmen Compensation, no liability could have been fastened upon the appellant Insurance Company to pay the compensation on the basis of regular policy made available in respect of insurance of a vehicle. It was not the claim under the provision of Section 166 of the Motor Vehicle Act and hence, the Labour Court had no jurisdiction to hold the appellant Insurance Company liable to pay the compensation to the dependents of the deceased. The substantial question of law is, therefore, answered accordingly.

4. The learned counsel appearing for the respondent No. 6, the owner of the vehicle, has invited my attention to the pursis dated 21.05.2013 said to have

been filed in the proceedings before the Labour Court registered as W.C.A. (F) No. 7 of 2008. The Learned counsel for the respondent No. 6 submits that the matter between the respondent No. 6 and the respondent Nos. 1 to 5 has been settled. In view of the aforesaid position, the appeal succeeds and the judgment and order dated 19.03.2013 passed by the Commissioner for Workmen''s Compensation/Labour Court, Buldhana, in W.C.A. (F) No. 7 of 2008 to the extent it holds the appellant Insurance Company jointly and severally liable to pay the compensation amount of Rs. 3,45,040/- to the claimants along with interest at the rate of 12% per annum is hereby quashed and set aside. Since the employer is not before this Court in this appeal, there is no question of upsetting the order passed by the Labour Court against the employer. No costs.