

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
FIRST APPEAL NO. 532 OF 2013  
WITH  
CIVIL APPLICATION NO. 1503 O 2012**

Kishor Transport Services Pvt Ltd Pune ...Appellant  
*Versus*  
Meera Baban Kamble & Ors ...Respondents

**WITH  
FIRST APPEAL NO. 637 OF 2013**

ICICI Lombard General Insurance Company Ltd ...Appellant  
*Versus*  
Meera Baban Kamble & Ors ...Respondents

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**Mr VD Raut**, for the Appellant in FA/532/13 and for the Applicant in CAF/1503/12.

**Mr R Mehta**, i/b KMC Legal Venture, for the Appellant in FA/637/13.  
**Mr PR Arjunwadkar**, for Respondents Nos. 1 to 6 in both FAs.

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**CORAM: G.S. PATEL, J**  
**DATED: 28th June 2017**

**PC:-**

1. Both these Appeals are directed against the same order dated 21st October 2011 of the Commissioner for Workmen's Compensation in the Labour Court in Pune.

2. First Appeal No. 532 of 2013 is by the employer. First Appeal No. 637 of 2013 is by the insurer. Both the owner and the Insurance Company were, obviously, Respondents or non-Applicants before the Trial Court. The order was jointly and severally against both Opponents to pay an amount of Rs. 3,79,120/-. There was also an award of interest.

3. There is no dispute that the insurer-Appellant in First Appeal No. 637 of 2013 has made the entire deposit. The admission of that Appeal is not opposed.

4. The Respondent however opposes the admission of the owner's First Appeal No. 532 of 2013 on the ground that the owner must separately and in addition to the deposit by the Appellant deposit the same amount all over again. This is on the basis that any judgment debtor must deposit the amount awarded against him before his Appeal can be entertained. Reliance is placed on the decision of a learned Single Judge of the Jaipur Bench of the Rajasthan High Court in *Bhudeo Singh v The New India Assurance Co Ltd*<sup>1</sup> which referred to Section 173 of the Motor Vehicles Act and said that no Appeal can be entertained unless a statutory compensation amount of Rs. 25,000/- is deposited. The argument is that this provision is *in pari materia* with Section 30 of the Employees' Compensation Act, specifically Section 30. The third proviso to Section 30 states that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant

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1 2012 AAC 2939 (Raj).

has deposited with him the amount payable under the order appealed against.

5. As against the decision of the Rajasthan High Court, which was admittedly under the Motor Vehicles Act, reliance is placed by the owner-Appellant on a decision of the Division Bench of the Orissa High Court in *Koili Bewa & Ors v Akshaya Kumar Mishra & Anr.*<sup>2</sup> In paragraph 11 of this decision, which arose directly under the Workmens' Compensation Act, the Division Bench said thus:

"11. From what has been stated above, it is clear that the insurer is really making a grievance on behalf of the insured (the employer), because it is the latter who is principally liable under the Act and the former has only to indemnify him, what was stated by the Kerala High Court in this regard that the insurer steps into the shoes of the insured, has much to commend. Appeal being available to an aggrieved person, and the employer being the real aggrieved person, we are inclined to think that the proviso has used the word employer for this reason."

6. I am in respectful agreement with the view of the Division Bench. What the arguments for the original Claimant, the present 1st Respondent, overlooks that every contract of insurance is a contract of indemnity. The insurer only damnifies the claim by a third party and agrees to pay the amounts that would otherwise be payable by the insured. What the argument seems to suggest is that even if the award is one, each of the award debtors must deposit the same amount again and again. The exercise is futile. The award holder will not be able to recover the entire amount multiple times

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2 1994 ACJ 215.

from different judgment debtors. Recovery from one will discharge all. The concept of joint and several liability is not that the same amount can be recovered multiple times from multiple defendants, but that the liability of each defendant is joint along with others for the full amount of the award and that each is also separately liable once for the full amount. Having recovered from one, the award holder cannot possibly recover from others. In other words, the deposit made by the Insurance Company is more than sufficient to meet the requirements of the statute. It serves the legislative purpose which is to ensure that the award holder does not have to go through a time-consuming process, and that the security for an award in favour of an employee is readily available in terms of the deposit. The insurer has made that deposit. This is surely sufficient. It is a matter between the insurer and its constituent insured if the insurer wants to recover the amount from the insured. The award holder certainly cannot insist on the same amount being deposited multiple times.

7. The requirement of deposit by the owner in First Appeal No. 532 of 2013 is dispensed with. The deposit in First Appeal No. 637 of 2013 will be sufficient to cover the claim. In the event the Insurance Company's Appeal succeeds and it is allowed to take back its deposit even while the Appeal by the insured owner is yet to be considered, the Appeal by the insured owner will not be heard and no order will be passed in favour of the insured owner unless there is a deposit. I am in fact making it abundantly clear that unless there is an available deposit at the time of disposal of these Appeals, the owner's Appeal will not be considered on merits and will be dismissed for want of an available deposit. The insured owner is also

put to notice that in such an eventuality, the deposit that will then be required will be of the entire amount awarded with complete interest until that date, and no lesser amount.

8. Both the First Appeals, **Admit**.
9. The Respondents waive service.
10. The amount deposited is to be invested in fixed deposit of any nationalized bank.

**(G. S. PATEL, J.)**