

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.16 OF 2002

Branch Manager, The Oriental
Insurance Company Ltd., : ..Appellant
Infront of Bus Stand, main
Road, Latur

V E R S U S

Narayan s/o. Kishanrao
1) Suryawanshi, age 40 years,
occ. Nil., Latur, Dist.Latur

Sayad Ismail s/o. Fakroddin
2) Bhangarwale, Age : 60, Occ. : ..Respondents
Business, R/o. Balepeer
Galli, Latur, Dist.Latur

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Mr.A.A.Joshi, advocate for appellant
Mr.N.B.Patil, advocate for respondent no.1

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CORAM : M.T. JOSHI, J.
DATE : FEBRUARY 17, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the direction to pay compensation
in a proceedings under the Workmen Compensation
Act, present appeal is preferred by the insurer.

3] Respondent no.1 filed the application on the ground that while he was employee of respondent no.2 as a cleaner over the concerned truck, in the process of arranging tarpaulin on the truck, he fell down from the truck and suffered fracture at his right shaft femur. He was admitted in the Apex Hospital for eight days and was thereafter, admitted in the hospital of Dr.Rajendra Malu. A rod was inserted during the operation by Dr.Malu. He was admitted in that hospital for one month. He became permanent disabled due to said accident and he was unable to walk on the street without help of the stick and also work as cleaner. In the circumstances, petition for compensation came to be filed against original respondent no.2/present appellant – insurer.

4] The present appellant contested the claim. It was denied that the accident has occurred during

the course of employment. Further, the nature of the injuries were also denied.

5] Before learned Commissioner, respondent no.1 examined himself and the police official, who had conducted the investigation. Besides this, Dr.Rajendra Malu was examined, who has proved the disability certificate Exhibit U-24. It shows that the physical disability was about 15%, however, the loss of earning capacity was calculated by the Doctor at 100%. In the circumstances, taking into consideration the age of the respondent and his wages of Rs.2,000/- per month, necessary factor was applied and the compensation was calculated by the learned Member at Rs.2,21,004/- accepting the case of the respondent – claimant that he has become 100% disabled.

6] Mr.Joshi, learned counsel for the appellant, submits that in the present First Appeal against

the order passed by learned Commissioner under Workmen's Compensation Act, the substantial question of law would be as to whether, physical disability of 15% can be computed as 100% loss of earnings. He submits that even no X-ray reports were placed on record in support of the claim by the claimant. He, therefore, submits that the compensation should have been arrived at on the basis of physical disability i.e. 15% only.

7] On the basis of this material, following substantial question of law arises for my determination :-

“ Whether learned Commissioner committed patent error in arriving at the conclusion that there was 100% loss of earning ?

. My finding to the above point is in the affirmative and the appeal is, therefore, partly allowed for the reasons to follow.

8] The material on record would show that a rod was inserted in the thigh of the respondent-claimant. The claimant was working as a cleaner over the truck. In case of a person who was working as a cleaner on the truck, which is semi menial work, due to fracture to his right shaft femur, in my view, the loss of general capacity to earn can be estimated by 50% and not 100%.

9] The appeal is therefore partly allowed without any order as to costs.

a] The order of learned Commissioner to pay the compensation at Rs.2,21,004/- with interest at the rate of 12% per annum, is quashed and set aside.

b] Instead, it is directed that the original respondent no.1 - employer and present

appellant/original respondent no.2 – insurer, jointly and severally, shall pay the compensation at the rate of Rs.1,11,000/- with interest at the rate of 12% per annum from the date of the accident i.e. 25th January, 2000, till realisation of the same.

c] The appellant would be at liberty to get refund of the excess amount deposited with the Commissioner.

[M.T. JOSHI, J.]

kbp