

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 141 OF 2000

Hayatkhan alias Hamankhan Abdulakhan
alias Ayyubkhan Pathan
Age 18 years, Occu.: presently nil,
R/o Miskinpura, Latur

.. Appellant
(Orig. Applicant)

VERSUS

1] Shaikh Gulam Hussain S/o Shaikh Rashid
Age 35 years, Occu.: Business,
R/o Miskinpura, Latur

2] Branch Manager,
United India Insurance Company Ltd.,
Tilak Nagar, Latur

.. Respondents
(Orig. Opponents)

Mr. C.R. Deshpande, Advocate for the appellant
Mr. S.G. Chapalgaonkar, Advocate for respondent nos.1 and 2

CORAM : M.T. JOSHI, J.

DATE : 21/01/2015

ORAL JUDGMENT :

1. Heard Mr. Deshpande and Mr. Chapalgaonkar.

2. The only issue that has arisen in the present appeal is, as to whether the learned Commissioner while dealing with the Claim Petition under the Workmen's Compensation Act has arrived at a correct figure upon assessing the permanent disability of the present appellant in reference to his earning capacity.

3. The facts which are not now required to be taken into consideration for determination are, whether the appellant was cleaner over the truck which met with the accident and whether he suffered fracture to his left femur. The medical evidence was that he suffered 30% limbwise permanent disability. The appellant deposed that due to the permanent disability he became unable to carry his regular job as a cleaner which involved cleaning and washing of the truck, taking out punctured tyres by putting jack and certain other heavy works concerning the truck.

4. The learned Commissioner has taken into consideration all the facts and came to the conclusion that though medically 30% limbwise permanent disability is proved, so far as earning capacity, there is 50% loss of the same. In the circumstances, the salary of the present appellant was taken into consideration. Suitable factor was applied and compensation of Rs.1,35,132/-with interest at the rate of 12% per annum from the date of the accident till the realization was granted.

5. Mr. Deshpande, learned counsel for the appellant submits that the appellant is now totally unable to carry his job which demanded heavy work as is deposed by him. Therefore, according to him, the learned Commissioner ought to have assessed the loss of earning capacity as 100%. Reliance was placed on the ratio in the case of **"Sarjerao Unkar Jadhav V. Gurinder Singh and anr. 1991 (1) Mah L R 1045"**.

6. On the other hand, Mr. Chapalgaonkar submits that against the limbwise permanent disability of 30% of the present appellant, the learned Commissioner has already taken into consideration all the overall facts and assessed the loss of earning capacity of 50%. He submits that the appellant would very well be able to carry other works than that of the cleaning in view of the fracture to the left femur and he submits that no interference in the order is warranted.

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

I) Whether the learned Commissioner has

assessed the loss of earning capacity correctly?

My finding to the above point is in the affirmative. The appeal is therefore dismissed without any order as to costs for the reasons to follow.

R E A S O N S

8. In the case of "**Sarjerao**" (cited supra), the workman therein was in the job of painting of electric poles. He suffered injuries to his legs and was therefore required to walk on crutches. In the circumstances, this Court has observed in the said case that since the workman therein could not be able to continue his work of painting electric poles, the loss of earning capacity of the said workman would be 50% though, medically the same was 20% permanent disability.

9. It would thus show that the assessment of the loss of earning capacity is not to be assessed on the basis of the earlier occupation carried by the workman but one has to take into consideration the loss of earning capacity in general. In that view of the

matter, when the learned Commissioner has assessed the loss of earning capacity at 50%, there is no need to interfere in the said order.

10. Hence, the appeal is hereby dismissed without any order as to costs.

[M.T. JOSHI]
JUDGE

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