

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 240 OF 2011

The New India Assurance Co. Ltd.,
Yashovallabh Shopping Complex,
Opposite Dhule Municipal Council,
Dhule, District Dhule. .. Appellant

Versus

1. Nagnath Eknath Sirsath,
Age : 37 Years, Occu. : Driver,
R/o Shantinagar, Kopari Colony,
Zopadpatti, Near Bara Bangala,
Thane (East).
2. Sanjay Raghunath Bagul,
Age : Adult, Occu. : Owner of Tata
Sumo, R/o 109, Ganesh Nagar,
Mangal Co-operative Housing
Society, Bomvalli (West). .. Respondents

Shri Mukul S. Kulkarni, Advocate h/f Shri S. P. Kulkarni,
Advocate for the Appellant.

Mrs. Sangita Tambat-Dhumal, Advocate for the Respondent No.

1.

The Respondent No. 2 is served.

CORAM : S. V. GANGAPURWALA, J.

DATE : 19TH OCTOBER, 2015.

ORAL JUDGMENT :-

. The application filed for compensation by the respondent
No. 1 under the provisions of the Workmen's Compensation Act

has been allowed. Aggrieved thereby the present appeal.

2. Mr. Kulkarni, the learned counsel submits that, the accident had taken place in the year 2005. In the injury certificate which is given by the General Hospital on the same day there is no mention of fracture. The injuries mentioned are only abrasion, blunt trauma. However, the Commissioner Workmen's Compensation has considered 40% disability on the basis of examination of the claimant in the year 2009. According to the learned counsel, there is no evidence to show that the said disability is on account of the accident. According to the learned counsel, there is total non application of mind of the Commissioner.

3. Mrs. Tambat, the learned counsel for the respondent No. 1 submits that, the disability certificate has been proved after examination of the respondent No. 1. The Civil Surgeon and Medical Officer has issued disability certificate. According to the learned counsel the Tribunal has considered only 40% disability, whereas the certificate shows that it is a case of 45% of disability.

4. I have gone through the judgment, record and proceedings. This being appeal under the provisions of the Workmen's Compensation Act can be considered on substantial question of law only. The substantial question of law that arises in the present appeal is :

Whether the disability certificate issued on 27.05.2009 on the basis of examination of the claimant in the year 2009 can be relied to relate it to the accident of the year 2005 without any other evidence?

5. The fact that, the accident has taken place on 16.05.2005 has been held to be proved by the Commissioner. The said finding needs no interference. I have perused the certificate Exhibit U-15 which is issued by the General Hospital, Dhule on the very date of accident, wherein it is stated that, the said patient was brought at about 7.45 a.m. and was examined by the C. M. O. Mr. Patil and he was treated for the injuries such as abrasion and blunt trauma. So also advised Ex-ray. The said certificate nowhere states about any disability or sustaining any fracture. The another certificate Exhibit U - 19 is issued showing various injuries. So also stating that the claimant has sustained 45% injuries. The claimant was examined on or about 27.05.2009, while issuing said certificate i. e. almost four years after the accident. Whether the said injuries as are appearing in the certificate Exh. U-19 are the direct result of an accident of 16.05.2005 or not ought to have been considered by the Commissioner. There is nothing on record to show that the Commissioner has considered the said aspect of the matter. Even the doctor who is examined, he only states that, upon examination he has given said certificate. However, nowhere states that, as per the record maintained by the hospital and on

gong through the record of 16.05.2005 he has issued the certificate. It would be total unsafe to rely on the certificate Exhibit U-19 to arrive at disability vis-a-vis the accident in question.

6. The proceedings as are under beneficial legislation, I am inclined to grant one more opportunity to the claimant.

7. In the result I pass following order.

8. The impugned judgment and order is quashed and set aside. The parties are relegated before the Commissioner, Workmen's Compensation. The Commissioner, Workmen's Compensation shall decide application W.C.A. No. 10 of 2009 afresh. The parties shall appear before the Commissioner on 18.11.2015. The parties are entitled to adduce additional evidence. The present respondent No. 2 though served, has not appeared. The Commissioner shall issue notice to the respondent No. 2/Sanjay Bagul for appearance and thereafter decide the said proceedings expeditiously. The Record and Proceedings be sent back to the Commissioner forthwith. The amount deposited with the Commissioner shall be retained by the Commissioner till the disposal of the said application.

Sd/-

[S. V. GANGAPURWALA, J.]