

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

**FIRST APPEAL NO. 2827 OF 2015
WITH CA/9768/2012 IN FA/2827/2015 WITH CA/12673/2015
IN FA/2827/2015**

THE ORIENTAL INSURANCE CO. LTD AURANGABAD THR DIVISIONAL
MANAGER
VERSUS

1]ANAND MADHUKAR SHELAR
2]JUGALKISHOR S/O GANESHLAL BHUTADA DIED THROUGH L.RS.
2-A] RAMABAI WD/O JUGALKISHOR BHUTADA
2-B] SONAL D/O JUGALKISHOR BHUTADA
2-C] SUYOG S/O JUGALKISHOR BHUTADA.

...
Advocate for Appellant : Mr. Kanade Arun G.
Advocate for Respondents : Mr. Deshmukh Mohit R For R/1
...

CORAM : S.V.GANGAPURWALA,J.

DATED : 26TH OCTOBER, 2015

PER COURT :-

The application for compensation under the Employees Compensation Act is partly allowed. The insurance company has assailed the said judgment.

2] Mr.Kanade, learned counsel for the appellant strenuously contends that though disability certificate is issued to the extent of 50% the same has not been proved. The doctor who has been examined categorically stated that there are 3 blunt trauma injuries and one C.L.W., and he also admitted that simple C.L.W, will not cause any permanent disability nor blunt trauma will cause any permanent disability. While the Commissioner has considered

disability to the extent of 25% there is no question of loss of earning considering disability caused. There is no evidence to show that the operation was required to be performed. Only on physical examination by the Commissioner, the Commissioner has arrived at such a conclusion which is erroneous. There is no experts evidence on record.

3] Mr.Deshmukh, learned counsel for respondent supports the order and submits that there was a bilateral fracture injury also on the hip. Though disability certificate was to the extent of 50% the Commissioner has considered the disability to the extent of 25% only.

4] I have considered submissions canvassed by respective counsel. This being an appeal under the provisions of Employees Compensation Act, can only be considered on substantial question of law.

5] The Commissioner has observed that the disability certificate is issued to the extent of 50%. The injuries sustained by claimant are also spelt out from the injury certificate that is there was a bilateral fracture, half superior and inferior on hip. He was admitted in the hospital for 10 days. Even in cross examination it has come on record that the claimant was required to be operated. Though disability certificate was to the extent of 50% as far as loss of earning is concerned, the same is based on appreciation of evidence. The doctor who treated the injured is no more according to the observation made by Commissioner.

6] Considering the above, evidence has been appreciated in plausible manner, as such, no substantial question of law arises.

Appeal is dismissed with no order as to costs. In view of disposal of appeal claimants are entitled to withdraw the amount deposited by appellant. In view of disposal of Appeal, Civil Applications also stand disposed of.

[S.V.GANGAPURWALA,J.]

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