

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

FIRST APPEAL NO. 1652 OF 2015

NATIONAL INSURANCE CO. LTD.
NEAR KELKAR MARKET JALGAON AND DIVISION OFFICE AT HAZARI
CHAMBERS, STATION ROAD, AURANGABAD-431 005 THROUGH ITS
DIVISIONAL MANAGER AURANGABAD 431005

VERSUS

1] RAJENDRA BHIKA INGALE
2] RAMESH BHAVARLAL JAIN

...
Advocate for Appellant : Mr.S.B.Khan h/f Mr.Patankar Himanshu A
Advocate for Respondents : Patil Vijay B. for Resp 1

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CORAM : S.V.GANGAPURWALA,J.

DATED : 26TH OCTOBER, 2015

PER COURT :-

The learned counsel for the appellant submits that the Commissioner, Workmen's Compensation has failed to consider that the claimant was not employee of the original opponent no.1. The accident has taken place in the year 2009. The claim petition was filed in the year 2014. The delay in filing claim petition itself raises suspicion about the employment of the claimant with orig opponent no.1. According to the learned counsel, relationship of the claimant with original opponent no.1 as an employee is not proved. There is no documentary evidence to that effect. The learned counsel further submits that without any evidence on record, the Commissioner has

accepted the income of the claimant as Rs.2400/- p.m. There is absolutely no corroborative piece of evidence to accept the said contention. The learned counsel submits that the Court has failed to appreciate the evidence properly. The disability certificate is only to the extent of 45%, however, the Court while computing compensation has considered 100% disability, the same is illegal and does not stand to any reason.

2] Mr.Patil, learned counsel for the respondent claimant supports the judgment.

3] This being appeal under the provisions of Employees Compensation Act, can only be considered on substantial question of law.

4] As far as the relationship of the claimant with the original opponent no.1 as that of an employee is concerned, the said factum of employment is admitted by opponent no.1. Even evidence is led before the Commissioner. The opponent no.1 has also stepped into witness box, his evidence has not been impeached.

5] As far as quantum of salary is concerned, job of driver is skilled job. Accident has taken place in the year 2009. The Commissioner has considered salary as Rs.2400/- on the basis of Minimum Wages Act. The Commissioner has considered the said salary in a modest manner.

6] The delay in filing application would not be an impediment for considering application. The delay has been condoned by the Commissioner. The said order has become final.

7] The disability certificate shows that the claimant has sustained 45% disability. The disability is that both legs were amputated. The claimant was doing job of driver. While granting compensation, the Court has to consider functional disability. When a person has lost both his legs, certainly he would not be in a position to drive the vehicle. He would not be in a position to pursue his avocation which he was doing. In case a person is not in a position to do avocation as he was doing at the time of the accident, then in such case, 100% functional disability has to be considered. No error has been committed by the Commissioner.

8] Considering above, no substantial question of law arises. First Appeal is dismissed, however, with no order as to costs.

9] Needless to state claimants are entitled to withdraw the amount deposited by the appellant.

[S.V.GANGAPURWALA,J.]

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