

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

FIRST APPEAL NO. 1733 OF 2015

Pawan S/o Maroti Shinde,
Age : 23 Years, Occu. : Nil,
R/o Kondhur, Tq. Kalamnuri,
Dist. Hingoli. .. Appellant

Versus

1. Madhukar S/o Tryambakrao Rakhunde,
Age : Major, Occu. : Business,
R/o Nawa Mondha, Hingoli,
Taluka & District : Hingoli.
2. The United India Insurance Co. Ltd.,
Through it's Branch Manager,
Having office at : "Dayawan Complex",
Station Road, Parbhani,
Taluka & District : Parbhani. .. Respondents

Shri Surendra V. Suryawanshi, Advocate for the Appellant.
The Respondent No. 1 is served.
Shri S. G. Chapalgaonkar, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 02ND SEPTEMBER, 2015.**

ORAL JUDGMENT :-

. Mr. Suryawanshi, the learned counsel submits that, the appellant had filed application under the Workmen's Compensation Act, seeking compensation on account of the injury sustained by the appellant in an accident. The claim is

partly allowed. The claimant has filed the present appeal for enhancement of compensation.

2. Mr. Suryawanshi, the learned counsel for the appellant further submits that, the appellant had proved that, his salary was Rs.6,000/- per month. The appellant has stated the same in the pleading as well as in the evidence. Even the Respondent No. 1 owner/employer has admitted the said fact in his written statement. When a fact is admitted, it need not be proved. The said concept has not been adhered by the Commissioner, Workmen's Compensation, while holding the salary of the appellant as Rs. 3,000/- per month only.

3. The learned counsel further submits that, though disability certificate is showing disability as 60%, however the Commissioner has failed to consider the functional disability which is to the extent of 100%. The appellant was doing the job of coolie and because of the disability sustained, is now not in a position to do any job, much less job of a coolie. The doctor who has issued the disability certificate has also deposed and his deposition has not been shattered in the cross-examination. The Commissioner has not considered 100% functional disability.

4. Mr. Chapalgaonkar, the learned counsel for the Insurance Company submits that, the employer filed consenting written

statement. He did not step into the witness box. No document was filed showing that, the appellant was paid Rs.6,000/- per month. The Commissioner has rightly appreciated the evidence. The learned counsel further submits that, the disability certificate has not been issued by the doctor who treated the appellant. Even he has not clinically examined the appellant. It is only on the basis of the documents, the disability certificate is issued. Reliance on such a disability certificate was improper. In fact the Commissioner has awarded more compensation.

5. The Respondent No. 1 though served is absent.

6. With the assistance of the learned counsel, I have gone through the judgment, record and proceedings. As far as the aspect of salary is concerned, though the respondent No. 1 in his written statement has admitted about payment of salary and the quantum of salary, still the employer has not stepped into the witness box nor any document is filed on record substantiating the case of the appellant of getting Rs. 6,000/- per month as salary. There is absolutely no corroborative evidence in this regard. In absence of the same, Commissioner has rightly considered Rs. 3,000/- per month as the salary. Even otherwise the appeal can only be entertained on substantial question of law.

7. As far as the aspect of non consideration of functional

disability is concerned, the case of the appellant is required to be considered. While computing the compensation amount it is the functional disability which is required to be considered. Though the disability certificate states disability to the extent of 60% however, it has come on evidence that, the appellant who was doing the work of a coolie at the time of accident, would never be in a position to do the said job of a coolie. It would be the case of 100% functional disability, if, the injured is not in a position to do the job which he was doing at the time of accident. The evidence of the doctor and the appellant has not been shattered in this regard.

8. In light of the above, it would be appropriate to consider the functional disability as 100% while computing the compensation amount.

9. Considering the above, I pass the following order -

ORDER

I] The appeal is partly allowed.

II] The Respondent Nos. 1 and 2 are jointly and severally liable to pay an amount of Rs.3,98,466/- (Rs. Three Lacs Ninety Eight Thousand Four Hundred Sixty Six only) to the appellant with

interest at the rate of Rs. 12% per annum from the date of petition till its realization. The amount already paid shall be adjusted as on the date the same is paid.

- III] The Respondent No. 1, shall further pay 50% of the amount of compensation as penalty.
- IV] The first appeal accordingly stands partly allowed, however, with no order as to costs.

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15