

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

FIRST APPEAL STAMP NO.22669 OF 2015

Royal Sundaram Allianz Insurance
Co.Ltd., Subramaniam
Building II Floor, No.1 Club House
road, Annasalai, Chennai 600 002
through its authorized Officer

.. Appellant

Versus

1. Narsing Deelip Surwase,
Age 31 years, Occu. Nil,
R/o Hotti No.2, Taluka Renapur,
District Latur

2. Narayan Jagganathrao Sangole,
Age Major, Occu. Business,
R/o Shree Nagar, M.I.D.C. road,
Latur, Taluka and Dist. Latur

.. Respondents

Mr A.S. Deshpande, Advocate for appellant

CORAM : N.W. SAMBRE, J.

DATE : 5th August 2015

PER COURT

With the consent, appeal is taken up for hearing at this stage.

2. In the present appeal, which is at the behest of insurance company, the award delivered by the Commissioner for Workmens' Compensation and Judge, Labour Court, Latur on 28th April 2015 in WCA No.9/2010 is questioned. The learned Commissioner has awarded compensation of Rs.5,16,672/- to the claimant/respondent No.1.

3. It is required to be noted here that the claimant/respondent No.1 met with an accident on 30th September 2009 resulting into

sustaining injuries viz. rupture injury to his bladder, fracture to tibia and fibula of right, fracture to pelvis. According to Mr Deshpande, even if the above referred injuries are certified to have caused 27% disability, he would urge that the loss of earning capacity cannot be assessed to the extent of 100%. According to him, following question needs to be considered.

“ Whether the Commissioner for Workmens Compensation committed an error in appreciating the evidence of claimant's witness Dr. Arunkumar Anand Rao, who was examined at Exh.U-37 to give finding of 100% loss of earning capacity ?

4. In support, he has taken me through the observations made by learned Commissioner and also read over the testimony of said witness.

5. It is an admitted position on the record that the said witness has deposed in support of the injuries causing permanent disability of 27% and loss of 100% earning capacity. The claimant was working as a driver on vehicle. It is further brought on record that in view of the accident in question, claimant will have restricted right hip and knee movements and waisting of right quadriceps muscles and deformity to right leg and pain in the right leg. It was also deposed that the claimant cannot walk as a normal person.

6. Upon analysing the nature of injuries suffered by the claimant, particularly in view of the restriction on the movements of the claimant, the Commissioner for Workmens Compensation has awarded the compensation in question. The Commissioner considered 100% loss of earning capacity based on the expert's evidence. Once an expert has entered into witness box and deposed in support of the injuries and the loss of earning capacity, which is also specified in clear terms in his evidence, in my opinion, it will be inappropriate to discard or disprove the said testimony. Though the said witness was subjected to cross-examination, nothing could be elicited in support of the present appellant.

7. In view of above, in my opinion, the award of compensation, particularly keeping in mind that the injuries suffered are not specified in the schedule and pursuant thereto the Commissioner has taken recourse to the provisions of Section 4 of the Workmens' Compensation Act, has rightly awarded the compensation.

8. As such, no case is made out. The appeal fails, stands dismissed.

(N.W. SAMBRE, J.)

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