

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

FIRST APPEAL NO.415 OF 2015
WITH
CIVIL APPLICATION NO.3798 OF 2013
AND
CIVIL APPLICATION NO.1980 OF 2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Ms. Yogita Deshmukh i/b. M. M. Sathaye for the Appellant
None for the Respondent.

CORAM : K. K. TATED, J.
DATE : APRIL 7, 2015

P.C.:

1. Heard the learned counsel for the Appellant.
None for the Respondent.

2. This appeal is preferred by the Insurance Co. challenging the judgment and award dated 10/07/2012 passed by the Commissioner for Workmen's Compensation and Judge, 11th Labour Court, Mumbai in Application (WCA) No.619/C-184/2011 holding that the Respondent-claimant is entitled to recover Rs.6,45,840/- towards compensation. Being aggrieved by the said judgment and award, the Insurance Co. has preferred the present appeal.

3. The learned counsel for the Appellant submits that the learned Commissioner committed an error in law in holding that the claimant has suffered injuries during the course of the accident. She submits that at the time of accident the claimant was working as a driver on a motor vehicle trailer. On 21/06/2010 at about 12.30 hrs when the claimant was on his regular duty at 15, I.D. BPT, opp. office of Superintendent, Yellow Gate, Mumbai, the work of loading the pipes in the motor vehicle trailer was going on with the help of Crane. While loading the pipes the sealing of the crane suddenly broke down and the pipe fell upon right hand of the Applicant due to which right hand of the Applicant crushed.

4. The learned counsel for the Appellant submits that it is not the duty of the driver to supervise the loading and unloading of goods in the vehicle. Hence, the Tribunal erred in coming to the conclusion that the claimant sustained injuries during the course of the accident.

5. It cannot be doubted that the claimant (Respondent) being the driver of the trailer involved in the accident had seen that the trailer

was loaded and therefore, there is no substance in the submission made by the counsel for the Appellant and contention raised by the Appellant that the Respondent-Claimant did not suffer injury during the course of the employment.

6. The next contention raised by the Appellant that the Disability Certificate placed on record shows that the claimant lost his four fingers of right hand therefore, there is a loss of 50% earning capacity and yet the Tribunal has considered 100% disability.

7. It is to be noted that the claimant was working as a Driver and if he loses his 4 fingers including thumb, it is impossible for him to work as a Driver and therefore, 100% disability considered by the Tribunal.

8. Considering the observations made by the Tribunal in paragraph 12 of the impugned order, I hold that the claimant suffered the disability to the extent of 100% and he cannot continue his work in future. Hence, the objection raised by the Appellant is not tenable.

9. The learned counsel for the Appellant Insurance Co. submits that the Tribunal has awarded compensation on a higher side. He submits that though the medical certificate is filed, the same was not proved. The Respondent-Claimant has not placed any other supporting documents to show that he was earning Rs.5000/- pm. salary. It is to be noted that the salary certificate placed on record by the claimant was issued by the opponent No.1 truck owner with whom the claimant was working as a Driver. Owner did not raise any objection about the certificate. Hence, the objection raised by the Respondent is not sustainable in law. These facts are considered by the Trial Court in paragraph 12 of the judgment.

10. Considering the above mentioned facts, I do not find any substance in the First Appeal. Hence, the First Appeal stands rejected summarily.

11. Consequently, the Civil Applications, if any stand dismissed as infructuous.

JUDGE