

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.516 OF 2014

Hanuman Vamanrao Phokarkar

Age: 54 Yrs., occu. Nil

R/o S.T.Colony, Near Swaymwar

Mangal Karyalaya, Juna Jalna,

Tq. and Dist. Jalna.

= **APPELLANT**

(Orig. Petitioner)

VERSUS

- 1) Khayyum Khan Dulekhan
C/o Amjadkhan Yusufkhan,
Highway Automobiles,
Near Citizen Dhaba,
Near Hero Honda Showroom,
In front of Darshana Hotel,
Vishal Corner, Aurangabad Road,
Jalna, Tq. And dist. Jalna.

- 2) Divisional Managar,
Shriram General Insurance Co.
Ltd. 215004 Office No. 7 & 8,
First Floor, Tulshi Chambers,
In front of SFS School,
Branch office, Dayawan Complex
Akashwani, Tq. And Dist.
Aurangabad.

= **RESPONDENTS**

(orig. Respondents)

Mr. A.S.Usmanpurkar, Advocate for Appellant;
Mr. P.C.Mayure, Advocate for Respondent No.1;
Mr. V.N.Upadhye, Advocate for Respondent No.2.

CORAM : P.R.BORA, J.

DATE : 20th September, 2016.

ORAL JUDGMENT:

1) Heard. The present appeal is filed against the judgment and award passed by the Labour Court at Jalna in WCA No.11/2012 decided on 29th October, 2013, whereby the Labour Court has dismissed the said application. The aforesaid application was filed by the present appellant seeking compensation under the provisions of the Workmen's Compensation Act on account of injuries caused to him and the permanent disablement incurred because of the said injuries in a vehicular accident allegedly happened during the course of employment.

2) As is revealing from the pleadings, the present appellant was in the employment of Respondent No.1. It is further revealed that

the truck, which was involved in the accident, is owned by Respondent No.1 and at the relevant time, it was insured with Respondent No.2 – insurance company. Before the Labour Court, it was the contention of the appellant that he had incurred 20% disability because of the injuries caused to him in the alleged accident. It was his further contention that he was required to spend Rs.1,50,000/- on his treatment. AS was averred in the application before the Labour court, age of the appellant at the relevant time was 54 years and he was drawing salary to the tune of Rs.10,000/- per month. The appellant had, therefore, claimed compensation of Rs. 5,48,000/-.

. The aforesaid application was resisted by the employer as well as the insurance company. The employer has denied the contention that the appellant was being paid salary to the tune of Rs.10,000/- per month. The disablement allegedly incurred by the appellant was also denied by the employer as well as the insurance company.

. The insurance company had further raised a ground that on the date of accident, the appellant was not holding a valid driving license and as such, was not liable to indemnify the insured. The objection was also raised by the insurance company as regards to the permit of the vehicle, i.e. The truck involved in the alleged accident.

3) The appellant himself deposed before the Labour court and also examined the concerned medical officer, who had issued the disability certificate in his favour. After having considered the evidence adduced by the parties, the Labour court, the Ex-officio Workmen's Compensation Commissioner, has dismissed the claim application. The Trial Court has though recorded a positive finding that the appellant met with the accident during the course of his employment, has recorded a negative finding in so far as the income and medical expenses allegedly incurred by the appellant. The Trial Court has

also recorded a finding that on the date of accident, the appellant – applicant was not holding a valid driving license.

4) Shri Usmanapurkar, learned Counsel appearing for the original claimant, submitted that the Trial Court has adopted a technical approach, which has resulted in dismissal of the application. The learned Counsel submitted that on the date of the accident, the appellant – applicant was holding a valid driving license. The learned Counsel submitted that in fact the original driving license was also brought to the notice of the Trial Court and xerox copy of it was also placed on record. The learned Counsel further submitted that, however, the entire contents of the driving license were not xeroxed in the copy which was placed on record and as such, the Court has recording a finding that the appellant – applicant was not holding a valid driving license on the date of the accident. The learned Counsel has brought to the notice of this

court the original driving license which bears the endorsement to the effect that, it has been renewed on 1st April, 2009 and made valid till 23rd March, 2012.

5) The learned Counsel further submitted that even on other counts, the learned Labour court has taken a very technical view and has made some observations, which cannot be sustained. The learned Counsel has, therefore, prayed for setting aside the impugned judgment and award and to allow the application so filed by the appellant – applicant.

. In the alternative, the learned Counsel has prayed for remand of the matter by giving permission to the appellant – applicant to produced on record his original driving license and to lead necessary evidence there for.

6) Shri Mayure, learned Counsel appearing for Respondent No.1 i.e. original claimant, has conceded for the alternative prayer so made on

behalf of the appellant – applicant to remand the matter for its fresh decision

7) Shri Upadhye, learned Counsel appearing for insurance company, has opposed the submission so made on behalf of the appellant – applicant. The learned Counsel submitted that the Trial court has properly considered all the aspects and has rightly dismissed the application filed by the appellant/applicant.

8) I have carefully considered the submissions made on behalf of the learned counsel appearing for the respective parties. I have also perused the impugned judgment and the other material on record, more particularly the evidence adduced in the matter, copies of which are placed on record by the appellant. The Labour court has rejected the claim of the appellant observing that the appellant has failed to prove his case and further that at the time of the accident, he was not holding a valid driving

license.

9) The first ground, on which the Labour court has rejected the claim of the appellant appears to be apparently unsustainable. The fact that the appellant met with the accident and in the accident so happened, received certain injuries, has not been disputed by the employer and the insurance company has denied the aforesaid fact for want of knowledge, stating that the appellant shall strictly prove the said facts. The appellant himself had deposed before the Labour court and has stated about the injuries caused to him and also of the disablement incurred by him because of the said injuries. In the cross-examination, the following facts stated by the appellant on oath before the court that, -(i) in the accident so happened, his right leg was seriously injured; ii) that he was admitted in Udhan Hospital at Jalna and thereafter in Ambekar hospital at Jalna; iii) that his paw of the right leg has

become permanently disabled, have remained undisputed. Further, there is no denial of the fact stated by the appellant on oath that he incurred around Rs. 1,50,000/- on his treatment. There is further no denial of the fact stated by the appellant that as because his right leg has become impaired and completely disabled, henceforth he would not be able to drive any vehicle.

10) Moreover, the appellant had also examined Dr. Pratap Ghodke, who has deposed on oath before the Court that he had issued the Disability Certificate to the appellant and has also deposed that the appellant may not be able to perform driving in future. Dr.Ghodke was elaborately cross-examined by the learned counsel for the insurance company. In the cross-examination, the fact stated by Dr.Ghodke that the appellant will not be able to perform the job of driving in future, has remained unshattered. It is true that the other suggestions were put to

Dr.Ghodke to the effect that the fractures are always liable to be united and further that by physiotherapy treatment the appellant could have been fully recovered, the fact stated by Dr. Ghodke in his examination-in-chief, that the appellant will not be able to perform the job of driving in future, has remained undisturbed. In view of the evidence as aforesaid the observations made and the conclusions recorded by the court below that the appellant has failed to prove the nature of injuries and disablement caused to him, cannot be sustained. Merely because the doctor did not produce on record the X-ray report, his entire evidence cannot be discarded, more particularly when as mentioned earlier, on the material point, his testimony has remained undisturbed. The findings recorded as above, therefore cannot be sustained.

11) The second ground on which the court below has rejected the claim of the appellant is that he was not holding a valid driving license

on the date of accident. From the record it is evident that the court below has recorded the aforesaid finding on the basis of the document placed on record, i.e. xerox copy of the driving license of the appellant. As has been submitted by learned Counsel appearing for the appellant, the appellant was holding a valid driving license on the date of accident and the original license was also at one point of time shown to the court below. But, while placing on record the xerox copy of the said driving license, inadvertently, some portion remained to be xeroxed, which was material portion evidencing that the said driving license was renewed for the period till 23rd March, 2012 and that was the reason that the court below recorded a negative finding holding that on the date of accident, the appellant was not holding a valid driving license.

12) The appellant has produced on record the original driving license and the xerox copy thereof. The original driving license is perused

by this court. It bears an endorsement evidencing that the validity of the said driving license has been extended till 23rd March, 2012. However, the court below cannot be blamed for recording a finding that the appellant was not holding a valid driving license on the date of accident since the document before the court below was not reflecting the further validity period of the driving license till 23rd March, 2012. In the background of the facts as aforesaid, learned counsel for the appellant has prayed for remitting the matter back to the court below with permission to file the original driving license evidencing the fact that the period of same has been extended till 23rd March, 2012 and to lead necessary evidence therefor.

. Considering the material on record, the request so made by the appellant appears to be worth considering since one of the reasons for rejecting the claim by the court below is that the appellant was not holding a valid driving license on the date of the accident.

13) For the reasons recorded as above, it appears to me that the matter has to be remitted back to the court below for deciding it afresh by giving opportunity to the appellant to place on record the original driving license and to adduce the necessary evidence to prove the said document. Further, as elaborately discussed by me, the finding recorded by the court below that the appellant has failed in proving the nature of his injuries and the permanent disability caused to him, is also unsustainable and the evidence in that regard needs to be re-appreciated by the court below.

14) In the aforesaid circumstances, the following order, -

ORDER

i) The impugned judgment and order is quashed and set aside;

ii) The matter is remitted back to

the Trial court for deciding it afresh. The Trial Court shall permit the appellant/applicant to place on record the original driving license and to adduce necessary evidence to prove the said document. Needless to state that the respondents will have an opportunity to cross-examine the witnesses, which may be examined by the appellant/applicant and it will also be open for the respondents to adduce evidence, if any in rebuttal.

iii) Parties to appear before the Trial Court on 27th October, 2016. Thus, no fresh notice for their appearance would be necessary.

iv) Registry to send back the R and P forthwith to the concerned court.

v) The appeal is disposed of in
the aforesaid terms. Pending Civil
Application if any stands disposed of.

(P . R . BORA)
JUDGE

bdv/