

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

2 FIRST APPEAL NO.2448 OF 2016

SK ANIS SK RAZZAK
VERSUS
YOGESH KASHINATH BAJAJ AND ANR

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Advocate for Appellant : Mr. Patni Pramod F.
Mr. PV Barde, Adv. For Resp.No.1;
Mr.Chapalgaonkar S.G. Adv For Resp 2.

CORAM : P.R.BORA, J.

DATE : 15th September, 2016.

PER COURT :

1) Heard the learned Counsel appearing for the parties.

2) On perusal of the impugned judgment, it is revealed that the learned Workmen's Compensation Commissioner (for short, the Commissioner) has rejected the application filed by the present appellant on the ground that though the appellant had placed on record the disability certificates, did not prove the said certificates by examining the Medical Officer,

who has issued the said certificates. On perusal of the judgment it is further revealed that the learned Commissioner has recorded an affirmative finding that the applicant has proved that he met with the accident during the course of his employment. The discussion made in the impugned judgment further reveals that as about the income of the applicant/appellant also, some findings are recorded by the learned Commissioner. However, as mentioned above, the application has been rejected mainly on the ground that the appellant/applicant did not examine the Medical Officer and did not prove the disablement caused to him.

3) Shri Patni, learned Counsel appearing for the applicant/appellant, submits that considering the reasons assigned by the learned Commissioner for rejecting the application, the matter needs to be remanded back to the trial court by permitting the present appellant to examine the necessary witnesses so as to prove

the permanent disablement incurred by the appellant/applicant because of the accidental injuries.

4) Shri. Barde, learned Counsel appearing for Respondent No.1 and Shri. Chapalgaonkar, learned counsel appearing for Respondent No.2 have opposed for remitting the matter back as prayed for by the appellant stating that without any cogent reason the appellant/ applicant has failed in adducing the necessary evidence before the trial court.

5) As noted earlier, in the impugned judgment, the learned Commissioner has recorded a positive finding that the appellant was injured in a vehicular accident happened during the course of his employment. From the material on record and as has been observed by the learned Commissioner, there is no dispute that the appellant was in the employment of Respondent No.1. Though there is some dispute raised by

Respondent No.1 about the salary which was being paid to the appellant, the learned Commissioner has observed that the employer had contended in his reply that he was paying Rs.1500/- per month to the appellant and was also paying Rs. 20/- per day by way of Bhatta. There is further no dispute that on the date of accident, the offending vehicle was duly insured with Respondent No.1-insurance company. There further appears no dispute about the fact that some injuries were caused to the appellant in the alleged accident. However, the learned Commissioner has declined to award any compensation and has consequently rejected the application filed by the appellant solely on the ground that the appellant did not examine the concerned medical officer to prove the disability certificates filed on record.

. In para 19 of the impugned judgment, the learned Commissioner has also observed that there are two medical certificates on record, one at Exh.U-7 and another at Exh. U-17 and in the

medial certificate issued later in point of time, the percentage of disability was shown to have been increased, which according to the learned Commissioner, was not acceptable.

6) From the facts, as aforesaid, it is quite clear that though the appellant had sufficiently proved that he had suffered certain injuries resulting in incurring some sort of permanent disablement in a vehicular accident, happened during the course of his employment, the learned Commissioner has rejected his application for want of necessary medical evidence. In fact, merely for the aforesaid reason, the Tribunal ought not have outrightly rejected the claim of the appellant. It also cannot be ignored that the burden was on the appellant to sufficiently prove the injuries caused to him as well as the disability incurred by him because of the said injuries by adducing necessary medical evidence so that the amount of compensation could have been adequately assessed by the learned

Commissioner. In the aforesaid circumstances, according to me, it would be in the interest of justice to remit the matter back to the trial court by giving permission to the appellant to adduce the necessary evidence and direct the learned Trial court to decide the matter afresh on the basis of evidence which may be adduced by the appellant. In the result, the following order, -

O R D E R

i) The impugned order is set aside.

ii) The matter is remitted back to the Trial Court. The trial court shall permit the appellant /applicant to adduce the necessary evidence to prove the injuries caused to him and the disability incurred by him because of the said injuries. Needless to state that the respondent shall have an

opportunity to cross-examine the witnesses, which may be examined by the appellant and it will also be open for the respondent to adduce the necessary evidence in rebuttal, if so required.

iii) On the basis of the evidence, which may be adduced, the trial court shall record its finding afresh and pass appropriate order.

iv) The parties to appear before the Trial Court on 28.10.2016. Thus, no fresh notices would be necessary for their appearance before the trial court.

v) The appeal stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

bdv/