

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

FA NO.3276/2015

907 FIRST APPEAL NO. 3276 OF 2015

Ramesh Vishwanath Alure,
Age 50 years, Occ.Nil,
r/o. Dagadwadi, Post Bori,
Ta.and District Latur.

**...APPELLANT
(Orig.Appellant)**

VERSUS

1. Bhanudas Bhagwanrao Joshi,
Age Major, Occ. Business & Agri.,
R/o Mataji Nagar, Latur,
Tq. and District Latur.

AND FOUR OTHERS.

**...RESPONDENTS
(Orig.Respondents)**

...
Advocate for Appellant : Mr.A.V.Patil, h/f Mr.Gaddime Arvind N.
Advocate for respondent nos. 1 to 5 : Mr. Shahane Pradeep L.,
Advocate.

...
CORAM : P.R. BORA, J.
Dated: April 12, 2016

...
PER COURT :-

1. The original claimant in WCA No.29/2010, being aggrieved by the judgment and award, passed by the Commissioner for Employees Compensation and Judge, Labour Court, Latur, on 31st August, 2015, has preferred the present appeal seeking enhancement in the amount of compensation granted vide the said award.

2. The appellant / claimant had filed the aforesaid

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application seeking compensation from respondent no.1 for the injuries sustained by him resulting in causing permanent disablement to him claiming that the alleged accident had happened during the course of, and out his employment with respondent no.1. Appellant / claimant had claimed the total compensation of Rs.2,54,160/-.

3. It was the contention of the claimant before the trial Court that though his physical disablement is certified to be 30%, he has lost his hundred per cent earning capacity. Before the learned Commissioner the present respondents had resisted the claim petition on several grounds. The learned Commissioner, after having assessed the oral and documentary evidence brought before it, however, rejected the objection raised by the present respondents, that there was no employer-employee relationship between them and the appellant. The learned Commissioner, holding that the claimant has proved 30 per cent disability, assessed the compensation accordingly and passed an award for Rs.74,831/- and made the respondents jointly and severally liable to pay the aforesaid amount of compensation to the appellant with 12% interest and 50% penalty as per the provisions of law.

4. In the present appeal, it is the contention of the claimant / appellant that the learned Commissioner failed in appreciating that though the physical disablement incurred by the claimant / appellant may be to the extent of 30%, in so far

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as his earning capacity is concerned, the loss suffered by the claimant appellant was hundred per cent. It is the further contention of the claimant / appellant that, in such circumstances, the Commissioner ought to have allowed the application filed by the claimant / applicant in toto and must have awarded the compensation as was prayed in the application.

5. The learned Counsel appearing for the respondents supported the impugned judgment and award.

6. I have carefully gone through the impugned judgment. While deciding issue no.4, the learned Commissioner has elaborately discussed the evidence adduced by the appellant / claimant. The appellant / claimant had examined Dr.Kazi, who had issued the disability certificate to the claimant. In the examination in chief, though Dr.Kazi deposed that the disability so caused to the claimant / appellant has resulted in hundred per cent loss of the earning capacity of the claimant / appellant, in the cross examination, said Dr.Kazi has admitted that there was no amputation of any finger and there was only fracture and crush injury to the left hand of the patient. Dr. Kazi has further admitted that there was only fracture to the left thumb of the patient. Dr. Kazi has further admitted that the patient was capable of doing all work by his right hand. The learned Commissioner has observed that Dr.Kazi did not explain as to how he has arrived at the -

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conclusion that the claimant has lost hundred per cent earning capacity. In view of the facts which have come on record in the cross-examination of Dr.Kazi, the learned Commissioner has recorded a finding that the claimant / appellant has failed in proving that he has lost his earning capacity to the extent of 100%. The learned Commissioner has observed that since the claimant did prove the disability incurred by him to the extent of 30% he was entitled for compensation in proportion to the said disablement and accordingly has determined the compensation.

7. After having scrutinized the discussion made by the learned Commissioner, in light of the evidence on record, it does not appear to me that the finding recorded by the learned Commissioner is anyway perverse, or contrary to the evidence on record. The appellant has not made out any case warranting interference in the impugned judgment and award. Hence, following order:

ORDER

a) The First Appeal (No.3276/2015) is dismissed without any order as to the costs.

(P.R. BORA, J.)

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AGP/-