

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

FIRST APPEAL NO. 1179 OF 2012

Mr. Ramsadan Rajram Gaud	... Appellant.
V/s.	
Mr. Sandeep Govind Malekar & Anr.	... Respondents

Mr. T. J. Mendon for the appellant.
Mr. S. M. Dange for the respondent no.2.

**CORAM : K. K. TATED, J.
DATED : 18/01/2016**

PC.:

. Heard learned Counsel for the parties.

2 This Court by order dated 02.07.2013 directed to issue notice to the respondent no.2 Insurance Company with intimation that if it is possible and convenient to the court, matter will be decided finally at the stage of admission. Thereafter, the learned Counsel for the appellant filed private paper book containing the copy of claim application, written statement filed by the respondent, notes of evidence and other documents. Hence, by consent of both the parties, matter is taken on board for final hearing at the stage of admission.

3 This First Appeal is preferred by original claimant challenging the Judgment and Award dated 03.08.2010 passed by the Commissioner for Workmen's Compensation and Judge, 9th Labour Court, Mumbai in Application (WCA) No. 384/C-154/2005 partly allowed the Appellant's application to the extent of Rs.4000/- and Rs.1000/- towards the

penalty with interest @ 12% per annum from 03.09.2010 till the realisation.

4 Few facts of the matter are as under:

a) The Appellant was working with Respondent No.1 as a cleaner and fetching the salary of Rs. 4,000/-. On 12.04.2005, the appellant met with an accident while working as a cleaner on motor vehicle no. MH-04-BG-1311 owned by Respondent No.1, insured with Insurance Company Respondent No.2 and sustained injury as follows:

i) Fracture Rt. Wrist intrarticular L/4

ii) Rt. C radius ulnar styloid

iii) injury to Rt. Wrist, Lt. Hand, chin and other multiple serious injuries.

b) Hence, the Appellant has filed the claim petition for compensation before the Commissioner for Workmen Compensation at Mumbai as per provision of Workmen's Compensation Act, 1923 (hereinafter will be referred as 'the said Act'). The Appellant in support of his claim filed affidavit-in-lieu of evidence dated 29.04.2010 and made available himself for cross-examination. The Appellant also examined Dr. Kshitij M. Shah, Orthopedic Surgeon from Disha Hospital, in support of his contention about permanent partial disability as well as earning capacity.

c) The Respondents filed their written statement. Insurance Company opposed the application filed by the claimant for compensation on several ground.

d) The Commissioner for Workmen's Compensation after considering the evidence on record held that Respondents are liable to pay sum of Rs. 4000/- by way of compensation to the Appellant. The Commissioner also directed to Respondent No.1 owner of the vehicle to pay Rs.1000/- by way of penalty. Whereas, in claim petition, the Appellant claimed sum of Rs.5,12,568/- with interest @ 12% per annum. Hence, the present First Appeal.

5 The learned Counsel Mr. T. J. Mendon appearing on behalf of Appellant submits that on 12.04.2005, the accident occurred in which the appellant sustained following injuries.

- i) Fracture Rt. Wrist intrarticular L/4
- ii) Rt. C radius ulnar styloid
- iii) injury to Rt. Wrist, Lt. Hand, chin and other multiple serious injuries.

6 The learned Counsel for the appellant further submits that on the date of accident the appellant was 27 years old. He was earning Rs.4000/- by way of salary. He submits that because of accident, the appellant was admitted in L.T.M.G. Hospital, Sion on 12.04.2005 and thereafter, he was under O.P.D. treatment. He submits that because of injury, the appellant was not in a position to continue his occupation as a cleaner. Hence, appellant has suffered 100% loss of earning capacity. Therefore, the appellant filed claim petition before the Commissioner for Workmen's Compensation claiming compensation of Rs.5,12,568/- with interest @ 12% per annum.

7 The learned Counsel for the Appellant claimant submits that the learned Commissioner erred in coming to the conclusion that the Appellant claimant failed to prove 100% loss of earning capacity due to the accident.

8 The learned Counsel for the Appellant submits that the appellant was admitted in sion hospital for 7 days due to the accident. Thereafter, he had taken further treatment in Disha hospital. He submits that in support of his contention, the appellant examined Dr. Kshitij M. Shah, Orthopedic Surgeon who issued 50% permanent partial disability certificate after going through the case papers of the claimant. He submits that even the learned Commissioner failed to consider the evidence of Dr. K. M. Shah for holding 50% permanent partial disability.

9 The learned Counsel for the Appellant submits that the learned Commissioner erred in coming to the conclusion that the Appellant was entitled a sum of Rs.4,000/- by way of compensation only. He further submits that the learned Commissioner directed Respondent No.1 to pay only Rs.1,000/- by way of penalty, in spite of the fact that the Respondent No.1 had knowledge about the accident, failed to pay compensation within statutory period. He submits that the learned Commissioner ought to have awarded penalty to the extent of 50% of the compensation, as Respondent No.1 failed to pay the same within statutory period as prescribed under the said Act. Even otherwise, the Judgment and Award passed by the learned Commissioner is contrary to law and same is required to be set aside.

10 On the other hand, the learned Counsel Mr. S. M. Dange appearing on behalf of Respondent No.2 Insurance Company submits that the learned Commissioner after considering the evidence on record rightly held that the Appellant claimant failed to prove 50% permanent partial disability. He submits that after considering the documents on record as well as the evidence of Dr. K. M. Shah (Exh. U-9), the learned Commissioner rightly held that appellant is entitled a sum of Rs.4,000/- by way of compensation. He submits that injuries sustained by the Appellant were of minor nature. Because of said accident, the Appellant claimant has not lost his capacity to do the earlier profession. On the basis of these submissions, the learned Counsel for the Respondent No.2 submits that no question of law involved in the present First Appeal and therefore, same is required to be dismissed with costs.

11 I heard both the sides at length. I have perused the copy of claim petition, written statements of both the Respondents, evidence of claimant and Dr. K. M. Shah. Considering the submissions made by both the Counsel, following question of law involved in the present First Appeal:

Question: “Whether the compensation awarded by the learned Commissioner was reasonable on the basis of evidence on record?” : Yes.

12 In the present proceeding, the Appellant was working as a cleaner on the vehicle owned by Respondent No.1. On 12.04.2005, Appellant met with an accident. At that time, he was 27 years old and

fetching the salary of Rs.4,000/- per month. He sustained the minor injuries as stated hereinabove. He has taken the treatment in L.T.M.G. Hospital, Sion and thereafter, on his own, he took discharge and started taking treatment in another hospital known as Disha Hospital. Though, the claimant was admitted in L.T.M.G. Hospital, Sion, he failed to produce any disability certificate issued by the said hospital. After five years from the date of accident, he contacted Dr. K. M. Shah. On the basis of case papers produced by the Appellant claimant, Dr. K. M. Shah issued disability certificate to the extent of 50% functional disability. Doctor K. M. Shah admitted in cross-examination that he had not treated the claimant and he just issued the disability certificate. In cross-examination Doctor stated as under “it is true that I have not treated the patient and I just issued disability certificate.” Hence, the learned Commissioner rightly disbelieved the evidence of Dr. K. M. Shah, who neither treated Appellant nor examined him when he was admitted in the hospital at Sion. On the basis of case papers, he issued 50% permanent partial disability certificate. Therefore, I do not find any reason to disagree with the findings given by the learned Commissioner on the point of 50% permanent partial disability.

13 On the question is whether the compensation awarded by the Commissioner was reasonable according to law, it is to be noted that the claimant sustained minor fractures because of the accident. He failed to produce any disability certificate and/or certificate of the injury from the L.T.M.G. Hospital Sion to justify his case about the injury. Apart from that the learned Commissioner specifically recorded in paragraphs 18 and 19 of the impugned judgment that the fractures

sustained by the Appellant heal completely within the period of 45 to 60 days. Therefore, the learned Commissioner considering the provisions of Section IV(1)(d) of the said Act held that the Appellant was entitled $\frac{1}{2}$ monthly payment of the same equivalent of 25% of the monthly wages. On the basis of these facts, the Commissioner rightly held that the claimant was entitled sum of Rs.4000/- by way of compensation. The learned Commissioner also directed the Respondent No.1 owner of the vehicle to pay a penalty of Rs. 1000/- and also the interest @ 12% per annum. Appellant has not brought on record any evidence to show whether he has lost his earning capacity due to the said accident.

14 In view of above mentioned facts, the question is answered in affirmative.

15 First Appeal stands dismissed.

16 Considering the facts of the present case, no order as to costs.

(K.K.TATED, J.)