

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 33 OF 2015

SHAIKH BABULALSHAIKL FARID
VERSUS
H.D.F.C. INSURENCE CO. LTD. AND OTHERS

...
Advocate for Appellant : Mr. Amol S. Gandhi
Advocate for Respondent No.1 : Mr. S.G. Chapalgaonkar
.....

CORAM : V. K. JADHAV, J.
DATED : 15th JUNE, 2017

PER COURT:-

1. Being aggrieved by the judgment and award dated 19.8.2014 passed by the learned Chairman, M.A.C.T. Aurangabad in M.A.C.P. No. 94 of 2012, the appellant-original claimant has preferred this appeal to the extent of quantum of compensation awarded by the Tribunal.

2. Learned counsel for the appellant-claimant submits that as per certificate Exh.50, from 9.4.2012 to 30.9.2012 the absentee period of 175 days of the appellant-claimant on duty was treated as leave without pay and the salary of the said period was not paid to him. Though the appellant-claimant was discharged from Kamalnayan Bajaj Hospital in the month of May, 2012, he was not in a position to attend the college and deliver the lectures in standing position. The appellant-claimant has exhausted the earned leave and other

admissible leaves for his earlier period of absence and as such, there was no other option but to opt for leave without pay. However, the Tribunal has not considered the same and awarded the salary of two months leave period only. Learned counsel submits that the Tribunal has not awarded any compensation separately for permanent disablement sustained by the claimant.

3. Learned counsel for the respondent-insurer submits that the appellant-claimant has not submitted his leave record in respect of medical leave. The Tribunal has therefore, observed that despite putting service of 16 years, it is difficult to believe that there was no medical leave on his credit. The appellant-claimant was discharged from Kamalnayan Bajaj Hospital on 16.5.2012 and on his own remained absent on duty till the 30.9.2012. There is no medical evidence to show that appellant-claimant was advised to take bed rest nor the appellant-claimant has stated so in his oral evidence. Learned counsel submits that the Tribunal has awarded just and reasonable compensation. No interference required in the quantum of compensation.

4. It appears from the evidence adduced by the appellant claimant that as per the contents of Exh.50, the appellant-claimant remained absent on duty from 9.4.2012 to 30.9.2012. He was

discharged from Kamalnayan Bajaj Hospital on 16.5.2012, however, his total absence period was of 175 days and the same was treated without pay leave and salary of the said period was not paid to him. Even though the appellant-claimant has examined the Head Mistress of the school, however, leave record was not produced before the Tribunal to show that the medical leave though was at his credit, it was not granted to him.

5. On the other hand, it appears that the appellant-claimant was discharged on 16.5.2012 from Kamalnayan Bajaj Hospital, Aurangabad and without any advise from his doctor, he remained absent on duty on his own for a period of four months. Witness Dr. Shivkumar Santpure has not stated anything about it. On the other hand, witness Dr. Santpure has admitted in his cross examination that except prolong standing and comfortable walk, there would not be any difficulty to the claimant due to permanent disablement. He has further explained the phrase of prolong standing i.e. for standing more than one hour would be the prolong standing. The appellant-claimant has not explained in his oral evidence as to what prevented him for joining his duties. The appellant was suffering from non union of right leg, shortening of right leg as well as stiffness in the knee joint. However, he could have requested the management or at least he could have delivered the lecture by sitting on chair. Witness

Dr. Santpure has admitted in his cross examination that except comfortable walk and prolong standing, there was no other problem to the appellant-claimant. In view of the same, the Tribunal has rightly awarded the compensation for leave period of two months and rejected the claim of the appellant-claimant for remaining period of 4 months. I do not find any fault in those observations made by the Tribunal.

6. So far as the permanent disablement sustained by the appellant-claimant to the extent of 50% is concerned, the appellant-claimant has examined witness Dr. Santpure and proved the contents of permanent disablement certificate in Form COMP. "B" at Exh.39. Witness Dr. Santpure has also stated about non union of right leg, shortening of right leg as well as stiffness in the knee joint. In his opinion, the appellant-claimant has suffered permanent disablement to the extent of 50%.

7. In view of above, Tribunal ought to have awarded compensation separately under the head of permanent disablement considering the nature of permanent disablement suffered by the appellant-claimant and he is entitled for Rs.50,000/- under the said head. Except this modification, the Tribunal has awarded just and reasonable compensation to the appellant-claimant. No interference

is required. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed with proportionate costs.
- II. The judgment and award dated 19.8.2014 passed by the learned Chairman, M.A.C.P. Aurangabad in M.A.C.P. No. 94 of 2012 is hereby modified in the following manner:-

“The opponent Nos. 1 and 2 are directed to pay, jointly and severally, the total compensation of Rs.2,41,871.00 (Rupees Two lacs forty one thousand eight hundred seventy one only) inclusive of “no fault liability” to the petitioner - Shaikh Babulal Shaikh Farid alongwith interest @ 9% p.a., from the date of filing of petition till realization of entire amount”

- III. Rest of the judgment and award stands confirmed.
- IV. Award be drawn up as per the above modification.
- V. Appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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