

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 422 OF 2003

Prakash Damodar Padghekar .. Appellant
vs.
Narayan R. Haldankar and anr. .. Respondents

Ms V.M. Sawant for the Appellant.
Mr. Narayan R. Haldankar, Respondent No.1 in person present.

CORAM : M. S. SONAK, J.
DATE : 31 MARCH 2017.

P.C. :-

1] Heard Ms Varsha Sawant, learned counsel for the appellant.
Mr. Narayan R. Haldankar, respondent No.1 is present in person.

2] On 17 March 2017, the ad-interim order granted in this case restraining respondent No.1 from executing the orders made by the Commissioner for Workmen's Compensation and Judge (Commissioner) was vacated, as, there was no clarity as to whether the amount of compensation had been deposited by the appellant, as directed at the stage of grant of ad-interim relief. Ms Sawant, however, now places on record a receipt from the Commissioner, which establishes that such amount had been deposited by the appellant. Accordingly, the order dated 17 March 2017, to the extent, it had vacated the ad-interim relief is hereby recalled.

3] Ms Varsha Sawant, learned counsel for the appellant, submits that this appeal raises the following substantial questions of law:

a] Whether a common application was at all maintainable in respect of two accidents, which respondent No.1 is alleged

to have suffered in the course of his employment ?

b] Whether the medical certificate produced on record by respondent No.1 could at all have been relied upon without examination of Doctor, who is said to have issued such certificate ?

c] In the alternate, whether, the examination of Doctor was necessary in order to prove the percentage of alleged disability incurred by respondent No.1 ?

d] Whether respondent No.1 could be said to have suffered from permanent total disablement or even permanent partial disablement, because the material on record clearly establishes that respondent No.1 resumed duties and was permitted to be resumed duties by the appellant employer ?

e] Whether the Commissioner was right in not directing the Insurance Company to bear the liability, if any, towards the payment of compensation to respondent No.1 ?

f] Whether, in the facts and circumstances of the present case, it is respondent No.1 who was negligent in the discharge of his duties and therefore, there was no liability to pay any compensation ?

4] Ms Varsha Sawant, learned counsel for the appellant, points out that respondent No.1 is stated to have suffered three injuries on three different occasions. She submits that the present claim was in respect of the two injuries sustained on 11 March 1997 and 23 October 1997. She submits that from this it is clear that respondent No.1 was used to defy the express instructions or in any case, it is respondent No.1, who was negligent in the matter and therefore, the

appellant's employer ought to have been absolved of his liability.

5] Ms Varsha Sawant submits that merely production of medical certificate was not sufficient in a case of this nature, where the percentage of disability is vital for the purpose of assessment of compensation. In this case, admittedly, the Doctor who is alleged to have issued medical certificate was never examined. In such circumstances, there was no basis for assessment of the compensation. Ms Sawant also submits that this was not at all a case of permanent total disablement or permanent partial disablement, since, respondent No.1 resumed duties and was permitted to resume duties. She points out that unless disability or injuries as enlisted in the schedule is proved, there is no question of any liability for payment of compensation. She points out that this aspect is also relevant for computing or assessing the quantum of compensation. She submits that in this case the impugned order is quite silent as to the assessment or computation of the compensation.

6] Ms Varsha Sawant also submits that the date of birth of respondent No.1 was 7 June 1948. This means that when the accident dated 11 March 1997 took place, he was 49 years of age. However, at the time of accident, which took place on 22 October 1997 is concerned, respondent No.1 was 50 years of age. She submits that the age of respondent No.1 is very relevant in determining the factor and consequently compensation amount. In this case, the Commissioner has ignored this circumstance and the impugned order is therefore, liable to be set aside.

7] Mr. Narayan Haldankar, respondent No.1 points out that his fingers were amputated in the accident whilst he was on duty. He submits that he was appointed as a Power Press Operator and the accident which has taken place was squarely in the course of his employment. He submits that the Commissioner's award is fair and proper and the same may not be interfered with.

8] The rival contentions now fall for determination.

9] There can be no objection to a claimant filing a joint application in respect of injuries sustained by him on 11 March 1997 and 23 October 1997. Informality is a rule before such an authority and in any case, no prejudice whatsoever can be said to have occasioned to the appellant on account of institution of the joint application by respondent No.1. Accordingly, there is no infirmity in the impugned order on the ground that the same was made in the application, which was joint *qua* the two injuries and the two accidents.

10] There is no material on record to establish that respondent No.1 was negligent or has disobeyed any express instructions. In this case, none of the parameters set out in the proviso to section 3 of the Workmen's Compensation Act, 1923 (said Act) can be said to have been satisfied. The onus is upon the employer to establish that any of the parameters set out in the proviso stand fulfilled. In this case, there is neither any pleading nor is there any evidence on basis of which it can be said that proviso to section 3 of the said Act was attracted to the facts and circumstances of this case. Accordingly, it

is not possible to accept Ms Varsha's contention based upon any alleged negligence on the part of respondent No.1.

11] In this case, it is true that the Doctor who issued the medical certificates has not been examined. However, the medical certificates are very much on record and medical certificates indicate precisely the percentage of disability. The injury which took place on account of accident dated 11 March 1997, resulted in the amputation of the two fingers and the injury which took place on 22 October 1997 resulted in the crush of one finger. The disability has reflected in the medical certificate is 18% and 3% respectively. Merely because the Doctor, who issued the medical certificates, was not examined, it cannot be said that the Commissioner was unjustified in relying upon the medical certificates. In this case, there is no dispute that the accident did take place on the two dates. In fact, it is the case of the appellant that the appellant offered medical treatment and had also borne expenses towards the medical treatment. Accordingly, non examination of the Doctor, in the facts and circumstances of the present case, makes no dent to the impugned judgment and order.

12] There is no clear evidence as to when respondent No.1 resumed duty after the two injuries. From the material on record, it cannot be said that the Commissioner has erred in rendering the findings on the aspect of disabilities and the percentage thereof. Admittedly, the injury involved amputation of fingers. Admittedly, respondent No.1 was a Power Press Operator and therefore, has to use his fingers for the purposes of his employment or more precisely the work he was carrying at the time when he suffered the two

injuries in the accidents and the in the course of his employment. Accordingly, there is no reason to fault the findings of fact recorded by the Commissioner.

13] There is, however, merit in the submission of Ms Varsha Sawant based upon the the purported date of birth of respondent No.1, which was 7 June 1948. It is true that on the date of first injury he was 49 years of age and on the second injury, he was 50 years of age. However, it cannot be said that this aspect was ingored by Commissioner in determination of compensation. In any case, considering the age factor, it cannot be said that there would be any significant change in the amount of compensation as determined by the Commissioner. This cannot be regarded as any substantial question of law to be decided in an appeal under section 30 of the said Act.

14] Insofar as liability of the Insurance Company is concerned, it was for the appellant to produce on record the insurance policy. This, the appellant has failed to do or produce. In such circumstances, the Commissioner cannot be faulted for not foisting liability upon the Insurance Company jointly and severally along with the appellant.

15] In the result, there is no case made out to interfere with the impugned order. The appeal is dismissed. The interim order is vacated.

16] Respondent No.1 shall be entitled to withdraw his compensation amount deposited before the Commissioner, together with interest as may be accrued thereon unconditionally.

17] In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)