

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 1191 OF 2007

Prakash Kishanrao Dinkar,
Age; 25 years, Occupation; Driver,
R/o; Wajegaon, Tq. & Dist. Nanded.

APPELLANTS
(Original Petitioners)

VERSUS

1) Prakash Mahajan Solanke,
Age; Major, Occupation; Business,
R/o; Wajegaon, Tq. & Dist. Nanded.

2) United India Insurance Co. Ltd.,
through its Branch Manager,
Branch Office, at Nanded.

RESPONDENTS
(Original Respondents)

.....
Smt. A.M. Ansari, Advocate for Petitioner
Respondents served.
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CORAM : SUNIL K. KOTWAL, J.

Date of Reserving Judgment : 30.8.2018

Date of Pronouncing Judgment : 4.9.2018

J U D G M E N T :

This appeal is directed, against the judgment passed by the Commissioner under the Employee Compensation Act, (hereinafter referred to as "the E.C. Act") 1923, Nanded in W.C. N.F.A. No. 11 of 1996. Appellant is the Original Petitioner and

Respondents are the Original Respondent No. 1 and 2 respectively. Respondent No. 1 is the Employer of Original Petitioner. Respondent No. 2 is the Insurance Company.

2. Heard Smt. A.N. Ansvari, the learned counsel for Appellant. None appeared for Respondents.

3. The learned counsel for the Appellant submits that undisputedly the appellant was employee of the respondent No. 1 as driver on Truck No. MTG- 3586. She submits that Respondent No. 1 paid monthly salary of Rs. 2,000/- per month to the Appellant. The above said truck was insured with Respondent No. 2 for the period of 5.1.1996 to 4.1.1997 covering the insurance of driver. Contention of learned counsel for Appellant is that on 18.5.1996 during the course of employment, when Appellant was driving the truck from Wajegaon to Takalgaon with loaded bricks, that time, the truck met with accident due to burst of front tyre of the truck. Therefore, Appellant sustained fracture injuries and he was admitted and treated in G.G.M. Hospital, Nanded from 18.5.1996 to 28.5.1996 as indoor patient and subsequently the Appellant obtained treatment from private doctor. Due to accidental injury, the Appellant sustained permanent disability of left leg and he permanently lost earning capacity as driver. According to learned counsel for Appellant, though by examining

the concern Medical Officer, appellant has not proved, injury certificates and medical bills or discharge card from the hospital, in written statement, Respondent No. 1 did not dispute that Appellant sustained injuries in the accident and therefore, at least for partial disability, compensation should be awarded under Section 4 of E.C. Act, 1923, with penalty under Section 4 (A) of the E.C. Act.

4. Though none for the Respondents appear at the stage of hearing of the appeal, I have gone through pleadings of the parties and evidence placed on record. It is to be noted that though in the written statement respondent no. 1 has admitted his relationship with the Appellant as employer and employee, he has disputed salary of Appellant at the rate of 2,000/- per month. He only admits monthly salary of Appellant as Rs. 1,000/- per month as driver. No documentary evidence is placed on record by Appellant to prove his monthly salary. Therefore, on the basis of admission of Respondent No. 1, I have no hesitation to hold that Appellant was the employee of Respondent No. 1 and he used to draw salary of Rs. 1,000/- per month as driver.

5. However, to get compensation under Section 4 of the E. C. Act, 1923 , the Appellant is bound to prove that on above said date in motor vehicular accident he sustained injuries which

resulted into permanent total disablement, or permanent partial disablement or temporary disablement either total or partial. However, unfortunately, before the trial Court, Appellant did not examine any doctor who treated the Appellant and received charges for treatment. Neither injury certificate nor any document regarding treatment and expenditure by Appellant for treatment, is proved by the Appellant.

6. Though learned counsel places reliance on written statement of the Respondent No. 1, after going through the said written statement, it emerges that Respondent No. 1 has specifically denied that in the motor vehicular accident, the Appellant sustained any injury, which resulted into any type of disability, which falls under Section 4 of the E.C. Act. In absence of iota of evidence to prove injury to the Appellant at the time of above said accident, merely on the basis of oral version of Appellant before the trial Court, compensation cannot be awarded under Section 4 or penalty under Section 4 (A) of the E.C. Act.

7. In the circumstances, after going through the judgment passed by the Commissioner under the E.C. Act, I do not find any illegality, which calls for interference by this Court. I hold that this Appeal being devoid of merits, deserves to be

dismissed. Hence following order :

ORDER

- (i) Appeal is dismissed.
- (ii) No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/