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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.4283/2016

United India Insurance Co.Ltd.,
through its Branch Manager,
Tilak Nagar, Latur,
Through its Authorised Signatory
Manager (Legal Hub),
at Aurangabad.

...Appellant..
(Org.res.no.2)

Versus

- 1] Satish s/o Bhimrao Pimpre,
age 24 yrs., occu.nil,
r/o Borgaon Kale Tq. & Dist.Latur.
- 2] Jairaj Steel Industries,
E-44, Old M.I.D.C., Latur.
Dist.Latur. Through its
Proprietor Jaiprakash
Balkishan Khatod.

...Respondents...

.....

Shri V.R. Mundada, Advocate for appellant.
Shri S.S. Shinde, Advocate for respondent no.1.
Shri Girish Rane, Advocate for respondent no.2.

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CORAM: M.S. SONAK, J.

DATE: 30.01.2018

ORAL JUDGMENT :

- 1] Heard learned counsel for the parties.

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2] Learned counsel for the appellant submits that this appeal requires to be admitted on the substantial question of law, which is to be culled out from ground No.IV to the appeal memo. In effect, he submits that the injury sustained by the employee in this case is a scheduled injury referred to at Entry No.4 Part II in Schedule I appended to the Employees Compensation Act, 1923 and, therefore, it was obligatory on the Commissioner to treat the loss of earning capacity at only 60% and not 100% as has been considered by the Commissioner. He submits that it is settled position in law that once an injury is relatable to any of the entries in Schedule I, then the same is to be deemed to result in only permanent partial disablement and not total disablement.

3] Learned counsel for the respondent no.1 — employee makes a reference to the evidence on record as also its evaluation by the Commissioner at paragraph no.41 of the impugned judgment and order. He submits that there is ample evidence on record that as a result of the injury, the employee was rendered incapacitated for all work, which he was capable of performing at the

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time of the accident resulting in such disablement. The learned counsel submits that in such circumstances, this is a case of "total disablement" as defined u/s 2(1) of the Employees Compensation Act, 1923 (the said Act"). The learned counsel submits that in such a situation, there arises no occasion to refer to Schedule I to the said Act. He relies on *Pratap Narain Singh Deo v. Shrinivas Sabata & another* (AIR 1976 SC 222); *S. Suresh v. Oriental Insurance Co.Ltd. & another* (AIR 2010 SC (Supp) 368) and *Maharashtra Sugar Mills Ltd. v. Ashru Jaiwant Tribhuvan* (AIR 1966 Bombay 240) in support of his submissions.

4] In the present case, there is no dispute that the employee sustained injuries arising out of and in the course of his employment. As a result of the injuries, his left hand was crushed i.e. fingers, wrists up to middle third and distal third junction of forearm with all tendons, muscles, bones were crushed up to distal third of forearm. As a result, such portion of his hand had to be amputated.

5] The employee in support has produced both — documentary as well as oral evidence. Dr.Rajkumar Datal,

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the registered medical practitioner as well as orthopedic surgeon, was examined on behalf of the employee. He has certified that the employee has sustained 65% permanent disability resulting 100% loss of his earning capacity. He has, however, issued a certificate estimating 42% permanent disability. He issued a certificate regarding loss of earning capacity being 100% since the employee on the date of the accident was discharging duties as a Helper.

6] The Commissioner has evaluated the oral and documentary evidence on record and such evaluation finds a reference in paragraph no.41 of the impugned judgment and order, which reads as follows:-

"In view of the finding to issue no.1, it is ample clear that the applicant has proved the case that he has sustained serious injuries in an accident arising out of and in the course of his employment on 27/05/2010 and therefore he is entitled to receive compensation amount as per the then existing provisions of the Workmen's Compensation Act. In view of findings to issue no.2, it is clear that monthly wages of the applicant employee were Rs.3950/-. In view of findings to issue no.3, it is proved that applicant had completed 17 years of the age at

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the time of accident. So, relevant factor applicable to his case is 227.49. Dr.Rajkumar Datal (Exh.U-21), the registered medical practitioner has treated the patient in his hospital as an indoor patient. He has certified that the applicant has sustained 65% permanent disability resulting into 100% loss of his earning capacity. Doctor evidenced that he has estimated 42% permanent disability and he has issued the certificate. Again on that day he has issued a certificate regarding loss of earning capacity and his loss of earning capacity is 100% as a helper. Dr.Rajkumar Datal is Orthopedic Surgeon, he is registered medical practitioner. Dr.Rajkumar Datal evidenced that, on 27/05/2010 applicant came to his hospital with history of causing injury to his hand while working in the factory. Doctor examined him and in examination he found that there was crush injury to his left hand, fingers, wrists up to middle third and distal third junction of forearm with all tendons, muscles, bones were crushed up to distal third of forearm. He was admitted in his hospital for a period from 27/05/2010 to 07/06/2010. The witness treated him by taking x-ray of his injured limbs. He has undergone operation and during operation his left arm is amputated from middle third distal junction. On 08/10/2010, the witness examined him radiologically and clinically and in that

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examination doctor assessed that the applicant employee has sustained permanent physical disability to the extent of 65% and accordingly, he has issued certificate. Doctor has identified his signature thereon and also admitted contents therein to be true and correct. Disability certificate is at Exh.U-22. It is evidenced that applicant is unable to do any work in future and because of that eh has assessed that applicant has sustained total loss of his earning capacity. Accordingly, the witness has issued certificate Exh.U-23, which is duly proved and exhibited by admitting contents therein to be true and correct. In the result, I hold and conclude that the applicant has sustained 65% permanent partial disability resulting into 100% loss of earning capacity. As such, compensation amount will have to be calculated on the basis of 100% loss of earning capacity. After taking into account aforesaid factors and the provisions of law I found that lump sum compensation amount Rs.5,39,151/- has become due and payable to the applicant on account of injuries sustained to him due to accident arising out of and in the course of his employment with the respondent no.1 on specified date. Therefore, issue no.4 is answered in terms of amount Rs.5,39,151/-."

7] Section 2(1) of the said Act defines "total

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disablement" to mean such disablement, whether of a temporary or permanent nature, as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement. The proviso, however, provides that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent, or more.

8] The crucial portion of the definition of the expression "total disablement" in Section 2(1) of the said Act is the incapacitation of the employee for all work, which he was capable of performing at the time of the accident resulting in such disablement. In this case, based upon oral as well as documentary evidence, the Commissioner has recorded a finding of fact that as a result of the injury, the employee was incapacitated for all work, which he was capable of performing at the time of accident resulting in such disablement. Since such a

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finding of fact is borne out, both from oral as well as documentary evidence on record, there is no case made out to interfere with such finding of fact. In any case, the record of such finding of fact does not give rise to any substantial question of law, which is a pre-condition for entertainment of any appeal u/s 30 of the said Act.

9] In *Pratap Narain Singh Deo* (supra), carpenter suffered amputation of his left hand above the elbow. In these circumstances, the Supreme Court held that since the carpenter cannot work with one hand, the disablement is to be treated as total and not partial. The contention similar to the one now raised in this appeal with reference to Item 3 of Part II of Schedule I was not entertained *inter alia* on the ground that no such case was even set out before the Commissioner and in any case the evidence on record did not bear out such a position. In the present case as well, it does not appear that the ground, which is now being urged in this appeal was raised before the Commissioner. In any case, the factual aspect of such ground cannot be said to be borne out from the material on record. In fact, the material on record is sufficient to sustain the finding of total disablement

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as defined u/s 2(1) of the said Act. Entry No.4 of Part II in Schedule I, to which reference is made, speaks about loss of a hand or of the thumb and four fingers of one hand or amputation from 11.43 Cms. below tip of olecranon. There is no evidence on record to suggest that the injury sustained by the employee falls within the precise terms of Entry No.4 on the basis of which the argument is sought to be developed by the learned counsel for the appellant.

10] The rule in the case of *Pratap Narain Singh Deo* (supra) was reiterated by the Supreme Court in *S. Suresh* (supra). The ruling in *Maharashtra Sugar Mills Ltd.* (supra) is not so relevant because in the said case, there was variance between the opinion of the Commissioner and the opinion of the doctor who had issued the medical certificate. In the present case, there is no variation. The Commissioner agrees with the opinion expressed by the doctor and finding is quite consistent with the medical certificate issued by the doctor. The case of the employee in the present matter is, therefore, on a better footing than the case of the employee in the case of *Maharashtra Sugar Mills Ltd.* (supra).

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11] In view of the aforesaid reasons, since no substantial question of law is made out, this appeal is dismissed. There shall be no order as to costs.

12] The amount of compensation, which is already deposited by the appellant, shall, therefore, now be withdrawn by the respondent no.1 - employee unconditionally.

(M.S. SONAK, J.)