

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.68 OF 2018
AND
CIVIL APPLICATION NO.120 OF 2018**

Shri Rajeev Kumar
alias Mylampara Kumaran Rajeev,
Son of late Kumaran,
Aged 58 years, business,
Resident of H.No.164,
Near primary health centre,
Balli, Quepem, Goa 403703.

... Appellant/Applicant

Versus

1. Shri Suhas G. Kane,
Son of Gopalkrishna Kane,
Major of age,
Resident of Colmorod,
Navelim, Salcete, Goa.
(Driver of Vehicle bearing
Reg. No.GA-08-F-9995).
2. United India Insurance
Company Ltd., Through
its General Manager,
Curchorem Church Road,
Jamnadas Bldg., Savordem,
South Goa 403706.
(Insurer of the Vehicle).

.... Respondents
(original respondents).

Shri Salil S. Saudagar, Advocate for the Appellant/Applicant.
Shri A.R.S. Netravalkar, Advocate for the Respondent No.2.

Coram : NUTAN D. SARDESSAI, J.

Date : 8th AUGUST, 2018

ORAL JUDGMENT :

Learned Advocate for the applicant invited attention to the decision produced on record on behalf of the respondent alongwith the reply opposing the same. It was his contention

that the learned MACT erroneously had disbelieved his case and had considered his notional income while awarding the compensation in his favour. The applicant was now seeking to rely on the Service Certificate and the Income Tax Returns to substantiate his case and therefore the application had to be allowed. He placed reliance in **Meenaben Pankajkumar Joshi & Ors. V/s. New India Assurance Co. Ltd. [2006 ACJ 2662]** to substantiate his contention on the production of document particularly considering that the petition is maintained under a beneficial piece of legislation.

2. Shri A.R.S. Netravalkar, learned Advocate for the respondent no.2 opposed the application on the premise that the accident had occurred on 15/06/2012 and the applicant/original claimant had suffered an injury to his shoulder which had resulted in a permanent disability of 5% as per the ALIMCO scale. The applicant had initially claimed compensation of ₹28,00,000/- and the learned MACT had granted ₹2,50,000/-. Be that as it may, it was his contention that the applicant had stated on oath that he was a businessman but had not produced any document to substantiate his case.

3. i have heard both the learned Counsels, besides considered the documents relied upon by the learned Advocate, apart from the testimony of the applicant on oath recorded by the learned MACT.

4. The said statement reveals that the claimant no doubt had affirmed on oath that his occupation was business and besides had reiterated during his cross-examination that he was in business apart from carrying out works and that he was getting some certain percentage from the business procured by him from Kaveri Engineering with whom he was otherwise employed. Besides, he had also revealed that he was filing the Income Tax Returns from the income for the works carried out by him. He could produce the document to that effect if permitted to do so. The present application arose from the appeal challenging the impugned order raised under a beneficial piece of legislation. The documents which were sought to be relied upon particularly the Income Tax Returns were public documents on behalf of the applicant. Considering the testimony of the applicant on oath regarding his business and earnings and his annual income prior to the

accident was ₹8,00,000/- approximately, i feel it appropriate in the circumstances of the case that opportunity be granted to the applicant for adducing evidence by producing the said documents on record and particularly considering the judgment in **Meenaben** (supra).

5. Having found myself in agreement with the contention of Shri S. Saudagar, learned Advocate for the applicant that these documents are vital to prove his income and to claim higher compensation vis-a-vis weighed with the contention of Shri A.R.S. Netravalkar, i deem it appropriate to allow the application. It would follow that the applicant would have to produce these documents before the learned MACT who shall afford an opportunity to the respondents to cross-examine the applicant in that regard and to sustain their case against him. It shall follow as a necessary corollary that the impugned order to that extent is quashed and set aside and the matter remanded to the learned MACT to give an opportunity to the applicant to produce the documents of his income before it with liberty to the respondents to cross-examine him and/or any witness which he seeks to examine in that regard. Shri A.R.S. Netravalkar submits that pursuant to the award of the

learned MACT the respondents had deposited the entire amount with the interest accrued thereon before the MACT which the applicant as a claimant should deposit before the learned MACT within four weeks from today. Liberty is granted to the respondents to withdraw the amount which the applicant shall deposit before the learned MACT in view of the judgment and award being quashed and set aside. The applicant is also at liberty to produce the other certificates produced on record without prejudice to the rights and contentions of the respondents who shall be at liberty to test the same on the touchstone of cross-examination. In view thereof, i pass the following

O R D E R

- (i) The Civil Application is allowed and the same stands disposed off accordingly.
- (ii) The impugned order stands quashed and is set aside.
- (iii) First Appeal stands disposed off.
- (iv) The parties are directed to appear before the learned Trial Court on 01/10/2018 at 10.00 hrs.

NUTAN D. SARDESSAI, J.

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