

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.306 OF 2006

National Insurance Co. Ltd, having
its Registered & Head-Office at No.
3, Middleton Street, Kolkata; one of
it's Divisional Office at Nanded, Now
through the Divisional Office at
Hazari Chambers, Station Road,
Aurangabad.

...Appellant

Versus

1. Ananda s/o Munjaji Kalse
Age: about 28 years, Occ: Nil,
R/o.- Shanktirth, Tq- Mudkhed,
Dist.- Nanded.

2. Uttamrao Bhalke,
Age: Major, Occ. Labour Contractor,
R/o. Opp. Z.P. High School, presently
at Dhanegaon,
Tq. & Dist. Nanded.

...Respondents

...

Mr. R.C. Bora h/f Mr. P.P. Bafna, Advocate for
Appellant.

Mr. Kiran M. Nagarkar, Advocate for Respondent
No.1.

...

**CORAM : P.R. BORA, J.
DATED : 25th FEBRUARY, 2019.**

ORAL JUDGMENT:-

. The insurance company has preferred the
present appeal against the judgment and order
passed by the Court of Civil Judge Senior Division
and Ex-officio Commissioner under the Workmens
Compensation Act at Nanded in W.C.N.F.A. No.7 of

2004 decided on 30.11.2005.

2. The present respondent no.1 had preferred the aforesaid application under the provisions of Workmens Compensation Act seeking compensation on account of injuries caused to him as a result and during course of employment with present respondent no.2. It was the case of respondent no.1 who is hereinafter referred to as the 'employee' that he suffered injury to his right eye during the course of his employment, which resulted in losing complete vision of the right eye. The employee had therefore claimed the compensation of Rs.6,00,000/- jointly and severally from respondent no.2 (hereinafter referred to as employer) and the appellant-insurance company. The learned Tribunal after having assessed the evidence on record has held the employee entitled for compensation of Rs.1,52,489/- jointly and severally from the employer and the insurer. Aggrieved by, the insurance company has preferred the present appeal.

3. Shri R.C. Bora the learned counsel holding for Shri P.P. Bafna appearing for the appellant-insurance company assailed the impugned award

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mainly on three grounds. First that the employee being a casual daily worker was not falling in the definition of workmen under the provisions of the Workmens Compensation Act and as such was not liable to be granted any compensation under the said Act. The second objection raised is about the permanent disablement as has been assessed by the Commissioner to the extent of 40%. The learned counsel inviting my attention to entries 25 and 26 of Part-II in Schedule-I submitted that present is the case wherein the employee had lost the vision of one eye and as such the percentage of disability was liable to be held not more than 30% whereas, the Commissioner has held it 40%. The third objection is as about the grant of interest. The learned counsel submitted that the liability of paying interest could not have been saddled on the appellant-insurance company.

4. Shri Nagarkar, the learned counsel appearing for the employee supported the impugned judgment and award. The learned counsel submitted that the Tribunal has rightly held the percentage of disability to the extent of 40% in view of the evidence brought on record. The learned counsel

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further submitted that the employee was in fact a permanent employee and even if it is held that he was a daily rated worker, even then the liability could not have been avoided by the employer and the insurance company to pay him the compensation when the injury was caused to him during the course of employment. The learned counsel submitted that the interest as has been awarded by the Commissioner is also correctly awarded since, the amount of compensation was not deposited within the period of one month from the date of accident. The learned counsel on all these grounds, prayed for dismissal of the appeal.

5. The first objection raised by the insurance company is liable to be rejected at the threshold. The definition of employee as has been given in the Workmens Compensation Act cannot be interpreted to mean or to exclude a daily rated worker from the said definition. Therefore, there appears no substance in the objection raised that the employee being a daily rated worker could not have been held as workman entitled for the benefit under the provisions of the Workmens Compensation Act.

6. The another objection raised by the appellant-insurance company as regard to percentage of disability also does not carry any substance. Entry 25 and 26 in Part-II of Schedule-I of the Act read thus:

"25. Loss of one eye, without complications, the other being normal.

26. Loss of vision of one eye, without complications or disfigurement of eye ball, the other being normal.

26A. Loss of partial vision of one eye."

It has been argued by the learned counsel that the evidence is only in respect of the loss of vision of one eye and as such the percentage of disability could not have been held by the Commissioner more than 30%. I am, however, not convinced with the objection so raised. Nothing is brought on record in the cross-examination of the employee that there were no complications or disfigurement of the eye ball. The certificate which is produced on record shows that there was complete destruction of eye ball. Considering the certificate on record, it does not appear to me that the Tribunal has committed any error in holding the percentage of disability in accordance with entry no.25 in the schedule.

7. In so far as the aspect of interest is concerned, since the amount of compensation was not deposited by the employer, the interest has been rightly awarded by the Commissioner at the rate of 6% p.a. and not at the maximum rate prescribed under the provisions of the Act. Thus, none of the objections raised by the insurance company appears sustainable. The appeal being devoid of any merit deserves to be dismissed and is accordingly dismissed.

8. The amount deposited by the appellant-insurance company in this Court is permitted to be withdrawn by respondent no.1 i.e. employee with interest accrued thereon. The amount lying in this Court in the present appeal be transmitted to the Court of Employees Compensation Commissioner at Nanded, so as to facilitate its withdrawal by the original claimant.

(P.R. BORA, J.)