

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

**FIRST APPEAL NO.595 OF 2020 WITH
CIVIL APPLICATION NO.3645 OF 2020**

M/s Super Packwell Industries,
having its address at
M-153, M.I.D.C. Industrial Area
Waluj, Aurangabad,
through its Proprietor

...APPELLANT

VERSUS

Kailas s/o Laxman Karale,
age major, Occ. Service,
R/o At Post Toki, Taluka Gangapur,
District Aurangabad

...RESPONDENT

.....
Shri S.P. Pandav, Advocate for appellant
Shri A.D. Pawar, Advocate for respondent (appointed)

.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 20th August, 2021

Date of pronouncing judgment : 23rd August, 2021

J U D G M E N T :

This is employer's appeal under Section 30 of the Employees' Compensation Act, 1923 (EC Act for short). The challenge herein is to the order dated 24/12/2019, passed by the Commissioner of Employees' Compensation & Judge, Labour Court-2, Aurangabad in Application (W.C.A.) No.20/2014. By the impugned order, the employer has been

directed to pay the respondent (employee) a sum of Rs.3,00,000/- together with interest @ 12% p.a. thereon from the date the amount of compensation fell due to the date of payment to be made, within two months from the date of the impugned order. The employer has also been directed to pay the respondent a sum of Rs.50,000/- towards penalty and Rs.5000/- towards costs of the proceedings.

2. The substantial question of law involved in this appeal is :-

“As to whether the Commissioner has been justified in awarding compensation for permanent disability suffered by the employee due to the accident arising out of, and in the course of employment ?”

3. Since the employee did not appear in this appeal in spite of service of notice of final hearing, the learned Advocate Shri Ajay D. Pawar was appointed to assist the Court in this matter. With the able assistance of learned Advocate Shri Ajay D. Pawar, I could decide this appeal.

4. Heard. Learned counsel for the employer would submit that, the employee has suffered a minor injury. He had, therefore, approached the Deputy Director, Industrial Safety and Health (Deputy Director for short), asking for compensation. The employee was, therefore, referred to the

Medical Board for examination. The Board found him not to have suffered disability. He was found fit to work. The employer paid him a sum of Rs.50,000/-. The employee then withdrew his claim and then, with ill advice, filed the application for compensation. The learned Advocate would further submit that, the disability certificate produced before the Commissioner was obtained six years after the accident. The doctor who issued it had not examined the employee or given him the treatment. The employee suppressed the facts that he had approached the Deputy Director, the Medical Board found him to be fit. According to the learned Advocate, the Commissioner erred in not relying on the certificate issued by the Medical Board. Relying on the disability certificate issued by a doctor six years after the accident, the Commissioner has passed the impugned order. He, therefore urged for setting aside the same.

5. Shri Ajay D. Pawar, the learned Advocate (appointed) for the respondent employee would, on the other hand, submit that, none of the members of the Medical Board who had examined the employee and then issued the alleged certificate was examined in proof thereof, in spite of the same were available. According to him, the disability certificate, relying on which the Commissioner has passed the impugned

order, was duly proved. The employer failed to prove to have had paid the employee sum of Rs.50,000/-. The learned Advocate placed reliance on the following authorities :-

- (1) Narayansing Kashiram Singh Hazari (Dr.) Vs.
Sheikh Ismail Imam & ors. [2020(4) Mh.L.J. 605]
- (2) Kedar kamlakar Badave Vs. Kailash Eknath Lahoti & ors.
[First Appeal No.1355/2012 – MANU/MH/2644/2019]
- (3) The United India Insurance Co. Ltd. Vs. Alpesh
[First Appeal No.197/2006 – MANU/MH/1827/2017]

6. Section 3 of the EC Act speaks of employer's liability for compensation. If personal injury is caused to an employee by accident arising out, and in the course of his employment, his employer shall be liable to pay compensation in accordance with provisions of Chapter II of the EC Act, provided the employer shall not be so liable,

- (a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days,
- (b) in respect of any injury not resulting in death or permanent total disablement, caused by an accident which is directly attributable to -

- (i) the employee having been at the time thereof under the influence of drink or drugs, or
- (ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employee, or
- (iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employees.

7. Section 4 of the very Act speaks of amount of compensation,

- (b) where permanent total disablement results from the injury, an amount equal to sixty per cent of the monthly wages of the injured employee multiplied by the relevant factor; or an amount of one lakh and forty thousand rupees, whichever is more.
- (c) where permanent partial disablement results from the injury,
 - (i) in case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable

in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

- (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

8. While Section 3(2A) speaks of employee's right to be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.

9. Admittedly, the employee met with the accident arising out of, and in the course of his employment on 13/4/2013. He was working on painting machine. It is alleged that, his right hand was crushed in the machine, resulting into multiple fractures to three fingers of his right hand. It appears that, although the employee initially denied to have had approached the Deputy Director for

compensation, he came around to concede the same. In his cross-examination, the employee admitted that, he was working with the employer through a labour contractor. He further admitted that, the Deputy Director had referred him to the Government Medical College & Hospital, Aurangabad for examination. Accordingly, he appeared before the Medical Board on 19/9/2019. Admittedly, the documents forming part of the proceeding before the Deputy Director have not been produced by the employee before the Commissioner nor has he referred thereto in his application for compensation. As such, he has suppressed all those facts from the Commissioner. Be that as it may.

10. The employee examined Dr. Parmeshwar as a witness in proof of the disability certificate (Exh. U-27). It is in his evidence that, on 14/2/2019, the employee had come to his clinic for disability certificate. He went through his medical papers. Examined the employee clinically. The employee had suffered crush injury on right hand, middle ring and little finger. He was operated for debridement and K wire were put in three fingers. He was having scars of operation in little finger, middle finger and ring finger. He is having restriction of movement of both fingers, extension by 10 degree, grip of right hand is weaker than left hand. Dr.

Parmeshwar certified the employee to have suffered 20% disability. He issued the certificate (Exh. U-27). The doctor admitted to have had not treated the employee for the injuries sustained by him in the accident. He also admitted to have had not gone through the report of the Medical Board before issuance of the certificate (Exh.U-27).

11. The employer, on the other hand, examined Dr. Sarojini, a Medical Officer working with Government Hospital, Aurangabad. She had appeared in response to the summons issued by the Commissioner. She had appeared before the Commissioner along with the original file of the employee maintained with the Government Medical College & Hospital, Aurangabad. It is in her evidence that the Medical Board comprising of three doctors namely Shri Borkar, Shri Varudkar and Shri Khaire had examined the employee as he was referred to the Board by the Deputy Director. On examination of the employee, the Board issued him certificate (Exh. C-17). Dr. Sarojini identified the signatures of the three doctors appearing on the certificate. The Board certified him to be fit for work.

12. The Commissioner did not rely on the certificate for the reason of non-examination of any of the doctors who had examined the employee and issued the certificate. Dr.

Sarojini has categorically deposed that those three doctors have either been transferred or serving with other Department. In view of the Commissioner, there is no evidence that any of those doctors were out of the reach of the Court process. The Commissioner further observed that the certificate issued by the Board has not been proved in accordance with Section 67 of the Evidence Act. Learned Advocate Shri Pawar relies on these observations of the Commissioner. Relying on the aforesaid authorities, he would submit that, in case of non-examination of a Medical Officer who had issued disability certificate, the certificate does not get admitted in evidence.

13. I have carefully gone through the authorities relied on to find them to be quite distinguishable on facts. I do not agree with the submission of the learned Advocate Shri Pawar and the observations of the learned Commissioner that for want of examination of any of the member of the Medical Board the certificate has not been duly proved. Admittedly, the employee was referred by the Deputy Director to the Medical Board for examination. The employee had accordingly appeared before the Board on 19/9/2019. Dr. Sarojini had appeared before the Commissioner along with all the original papers including the original certificate. After

having been verified a copy of the said certificate by the Superintendent of the Labour Court, the original was returned. As such, although the certificate (Exh.U-27) is not an original one, it is a copy compared with the original by a public servant in discharge of his official duties. As such, the certificate tendered in evidence is in the nature of a secondary evidence, admissible under Section 63(3) of the Evidence Act. Dr. Sarojini identified the signatures of the doctors who had issued the certificate. It has to be presumed that the certificate has been issued on due medical examination of the employee. In the given facts and circumstances of the case, it was for the employee to come clean and disclose all these facts. He appears to have consciously suppressed all these facts from the Commissioner.

14. This Court could have relied on the certificate issued by Dr. Parmeshwar, but for the facts that it was issued only for the sake of this proceedings. Admittedly, Dr. Parmeshwar had not treated the employee for the injuries suffered in the accident arising out of, and in the course of his employment. It is only six years after the accident and pending the application before the Commissioner the employee approached Dr. Parmeshwar who issued the disability certificate ostensibly after going through the medical

papers. It appears that, the certificate issued by Dr. Parmeshwar was obtained only for the purpose of the application for compensation. In this factual backdrop, the Commissioner ought not to have relied on the certificate (Exh.U-27).

15. Even otherwise, Dr. Parmeshwar certified the employee to have suffered 20% of disability. There is nothing to suggest the employee to have suffered permanent total disablement, entitling him for compensation in terms of Section 4(1)(b) of the EC Act. The Commissioner erred in granting compensation under the said Section.

16. The employer has, however, failed to prove his case to have had paid the employee a sum of Rs.50,000/-. A receipt allegedly issued by the employee was produced before the Commissioner. It has, however, not been duly proved. The fact, however, remains that, the employee had met with an accident and suffered injuries as a result thereof. He is, therefore, necessarily entitled for compensation. Without going into further details of injuries for want of evidence, suffice it to say that, ends of justice would be met if the employer is directed to pay the employee a sum of Rs.50,000/-. With this, the appeal is allowed in terms of the following order :-

(i) The order dated 24/12/2019, passed by the Commissioner of Employees' Compensation & Judge, Labour Court-2, Aurangabad in Application (W.C.A.) No.20/2014 is set aside.

(ii) The appellant employer shall pay the respondent employee a sum of Rs.50,000/- (Rupees fifty thousand) towards compensation. The said amount of Rs.50,000/- (Rupees fifty thousand) be paid to the employee from and out of the amount of compensation deposited by the employer with the Commissioner.

(iii) The said amount of Rs.50,000/- (Rupees fifty thousand) be paid to the employee along with interest accrued thereon from the date of deposit of the amount of compensation by the employer to the actual date of payment to the employee.

(iv) Out of the said amount in deposit with the Commissioner, a sum of Rs.25,000/- (Rupees Twenty Five thousand) be paid to learned Advocate Shri A.D. Pawar, towards his fees.

(v) The balance amount be paid back to the employer immediately.

In view of disposal of the First Appeal, Civil Application stands disposed of.

**(R. G. AVACHAT)
JUDGE**

fmp/-