

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

**FIRST APPEAL NO.2812 OF 2017 WITH  
CIVIL APPLICATION NO.5918 OF 2021**

The New India Assurance Company Ltd.,  
through its Authorized Official and  
Divisional Manager, Legal Hub,  
Adalat Road, Aurangabad

**... APPELLANT**

**VERSUS**

1) Dnyaneshwar Maruti Lahane,  
Age 27 years, Occu. Nil,  
R/o Baghzari, Tq. Ambajogai,  
District Beed.

2) Laxman Kishanrao Marapalle,  
Age 55 years, Occu. Business,  
R/o Latur Road, Tq. Chakur,  
District Latur.

**... RESPONDENTS**

.....  
Mr. A.S. Usmanpurkar, Advocate for appellant  
Mr. M.D. Gitte, Advocate for respondent No.1.  
Mr. T.M. Venjane, Advocate for respondent No.2  
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**CORAM : R. G. AVACHAT, J.**

Date of reserving judgment : 9th July, 2021

Date of pronouncing judgment : 19th July, 2021

**J U D G M E N T :**

Civil Application No.5818/2021 filed by the  
appellant for additional evidence is allowed.

2. This is an appeal under Section 30 of the Employees' Compensation Act, 1923 (for short the EC Act). The appeal has been directed against the order dated 18/4/2017, passed by the Commissioner for E.C. Act and Judge, Labour Court, Latur in Workmen's Compensation Application (WCA) No.87/2012. By the impugned order, the appellant and respondent No.2 herein (respondent No.2 and 1 respectively in WCA) have been directed to pay, jointly and severally a sum of Rs.7,75,008/- with 12% interest thereon from the date of the accident to the date of deposit in Court the entire amount. The respondent No.1 in the WCA (employer) has also been saddled with additional liability in the nature of penalty of Rs.3,87,504. The original respondent No.2 (Insurance Company) has, therefore, preferred the present appeal.

3. The substantial question of law involved in the present appeal is as under :

"Whether the learned Commissioner is justified in granting compensation in terms of Section 4(1)(b) of the Employees Compensation Act ?"

4. Heard learned counsel for the parties. Mr.

Usmanpurkar, learned counsel for the appellant would submit that, the learned Commissioner has erred in law in granting compensation under Section 4(1)(b) of the EC Act. The respondent employee did not suffer permanent total disablement as a result of the injury. There is no loss of earning capacity. After the accident, the employee has renewed his driving licence. As per Rule 18 of the Central Motor Vehicle Rules, the incumbent has to submit medical fitness certificate for renewal of a driving licence. The factum of renewal of driving licence has been suppressed from the Commissioner. The appellant, therefore, produced the same in this appeal. The employee suffered fracture of right lower leg. The disability certificate ought to have been issued one year after the date of the accident, as that is the right time to assess percentage of disability. The employee was advised physiotherapy. Before ascertaining the result of physiotherapy, the disability certificate has been issued. On the date of the accident, the employee had completed 26 years of age. Wrong multiplier has been applied. According to learned counsel, the employee for the first time came with a case that the accident occurred due to failure of the brake of the truck he was driving. The same is an improvement made only with a view to earn compensation. The learned counsel

ultimately urged for allowing the appeal.

5. Mr. Gitte, learned counsel for the respondent employee took me through the reasons given by the Commissioner in support of the impugned order. The learned counsel further submits that, the employee has not renewed his driving licence after the last renewal. According to him, the employee is unable to drive the heavy vehicle as he used to drive before the accident. He, therefore, urged for dismissal of the appeal.

6. The employer – employee relationship is undisputed. The employer did not contest the application before the Commissioner. The claim of the employee that he was serving at a monthly salary of Rs.6000/- has amply been proved. The only question involved in this appeal is as to whether the Commissioner has rightly awarded the compensation relying on Section 4(1)(b) of the EC Act.

7. Section 2(g) and 2(l) of the EC Act define the terms partial disablement and total disablement respectively. For ready reference, both the terms are reproduced below.

“(g) “partial disablement” means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a

employee in any employment in which he was engaged at the time of the accident resulting in the disablement and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in a every employment which he was capable of undertaking at that time : provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.”

(l) “total disablement” means 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.

Provided 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. Section 4 of the EC Act speaks of amount of compensation. Sub-clauses (b) and (c) thereof read as follows :-

“4. Amount of compensation:- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :-

(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.

Explanation : . . . . .

(c) Where permanent partial disablement results from the injury :-

(i) In the 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.

Explanation : . . . . .”

Section 4(2A) reads thus :

“(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during course of employment.”

9. Dr. Arunkumar deposed that, he did M.S. (Master of Surgery) and Diploma in Orthopaedics. He runs Orthopaedic Hospital at Latur. The employee was admitted to his hospital on 10/8/2012 with a history of road traffic

accident on 8/2/2012. The employee had suffered grossly communicated open fracture of right tibia and fibula for which ilizorov fixation was done at M.I.M.S.R. Medical College, Latur. In his hospital fixator was removed under anesthesia and he was put on above knee plaster. He was still coming for the treatment. He further deposed that, he did both clinical and radiological examination. He found that patient had sustained:-

- (1) Malunited fracture of tibia and fibula with shortening of right leg. Because of this injury the employee has sustained disability of shortening of right leg.
- (2) 30% restriction of right knee and ankle movements.
- (3) Grade 4 power of right quadriceps muscles.
- (4) He has pain over the right leg.
- (5) Deformity of the right leg.

Because of all these, the employee has sustained 28% permanent disability of his right lower leg. In the opinion of the doctor, the employee will not be able to drive any vehicle as before. He has issued certificate regarding loss of earning capacity of the employee stating that, the employee has sustained 100% loss of earning capacity. He further deposed that, the employee will not be able to do any manual work.

10. Although the doctor testified the employee to have suffered 100% of loss of earning capacity, the employee, in his cross-examination, stated to have come to the hospital on his own i.e. without any external aid. Although he denied to have renewed his driving licence, the appellant Insurance Company placed on record the employee's driving licence (Exh. A-6). The same indicates to have been renewed thrice post accident. Last such renewal is from 28/5/2018 to 16/5/2021. Admittedly, for renewal of a driving licence, the incumbent is supposed to furnish medical fitness certificate. It has to be presumed that the licence has been renewed after the employee was found fit to drive the transport vehicle. This fact goes a long way to show the employee to have not suffered permanent total disablement. The learned Commissioner committed error in applying Section 4(1)(b) of the EC Act.

11. The disability certificate (Exh.30) indicates the employee to have suffered 28% disability. It is thus a case of permanent partial disability. The quantum of compensation is to be ascertained in the light of Section 4(1)(c)(i) of the Employees Compensation Act. The quantum of compensation would, therefore, be worked out as under :



Salary per month : Rs. 6000/-

60% of the salary : Rs. 3600/-

The injured was of 26 (completed) years of age.

The appropriate multiple would, therefore, be 215.28

Therefore, Rs. 3600 x 215.28 = Rs.7,75,008/-

= Compensation proportionate to the loss of earning capacity

i.e. 28% of Rs.7,75,008/- comes to Rs.2,17,002=24 ps.

12. The Commissioner has not granted reimbursement of medical expenditure incurred by the employee. The employer averred in its written statement to have had paid Rs.1,50,000/- to the employee towards medical expenditure. Admittedly, the employee did not participate in the proceedings before the Commissioner. The averments of the written statement remained unproved. There is, therefore, no question of the employee not traversed the same either in his pleadings or evidence. Sub-section 2(a) of Section 4 entitles the employee to have reimbursement of the actual medical expenditure incurred by him for the treatment of injuries caused during the course of employment. Medicines and hospital bills amounting to Rs.1,40,000/- were placed before the learned Commissioner. In this factual backdrop, the

employee ought to have been granted compensation towards actual medical expenditure incurred. The said claim is, therefore, allowed even though the employee has not preferred appeal. By granting the said relief, the claim does not go beyond the averments in the claim application. As such, the First Appeal partly succeeds. Hence the order :-

**ORDER**

The appeal is partly allowed. The judgment and award dated 18/4/2017, passed by the Commissioner for E.C. Act and Judge, Labour Court, Latur in Workmen's Compensation Application (WCA) No.87/2012 is modified. It is held that, the claimant is entitled for compensation of Rs.2,17,002=24 ps. + Rs.1,40,000/- = Rs.3,57,002=24 ps. together with 12% interest thereon per annum from the date of accident till the date of depositing the said amount in Court.

Rest of the terms of the order/ award to stand unaltered.

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

fmp/-