

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4778 OF 2017

1. Sushil Subhashchandra Dhoot,
Aged : 45 years, Occ: Business,
Shri Tulsi Buildcon,
Plot No. E-43, MIDC, Chikalthana,
Aurangabad.
2. Vinay Premchand Surana,
Aged : 42 years, Occ.:Business,
Shri Tulshi Buildcon,
Plot No. E-43, MIDC, Chikalthana,
Aurangabad.

...APPELLANTS

VERSUS

Sk. Mois Sk. Saleem,
Aged: 20 years, Occu: Nil,
R/o: House No. SRT-29,
Labour Colony, Aurangabad.

...RESPONDENT

....

Mr. Yatin I Thole, Advocate for appellants
 Mr. Gaurav L. Deshpande, Advocate for respondent

.....
WITH

CIVIL APPLICATION NO. 432 OF 2019
CIVIL APPLICATION NO. 2164 OF 2021

IN

FIRST APPEAL NO. 4778 OF 2017

Sk. Mois Sk. Saleem,
Aged: 20 years, Occu: Nil,
R/o: House No.-29,
Labour Colony, Aurangabad.

...APPELLANT

VERSUS

1. Sushil Subhashchandra Dhoot,
Aged : Major, Occ: Business,
(Lower of Tulsi Beedcon Company)
R/o : Shri Tulsi Buildcon,
E-43, MIDC, Chikalthana, Aurangabad.

2. Vinay Premchand Surana,
Aged : Major, Occ: Business,
(Lower of Tulsi Beedcon Company)
R/o : Shri Tulsi Buildcon,
E-43, MIDC, Chikalthana, Aurangabad. ...RESPONDENTS

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Mr. Gaurav L. Deshpande, Advocate for applicant
Mr. Yatin I Thole, Advocate for respondents

.....

WITH

FIRST APPEAL NO. 3620 OF 2019

Sk. Mois Sk. Saleem,
Aged: 20 years, Occu: Nil,
R/o: House No.-29,
Labour Colony, Aurangabad. ...APPELLANT

VERSUS

1. Sushil Subhashchandra Dhoot,
Aged : Major, Occ: Business,
(Lower of Tulsi Beedcon Company)
R/o : Shri Tulsi Buildcon,
E-43, MIDC, Chikalthana, Aurangabad.
2. Vinay Premchand Surana,
Aged : Major, Occ: Business,
(Lower of Tulsi Beedcon Company)
R/o : Shri Tulsi Buildcon,
E-43, MIDC, Chikalthana, Aurangabad. ...RESPONDENTS

....

Mr. Gaurav L. Deshpande, Advocate for appellant
Mr. Yatin I Thole, Advocate for respondents

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CORAM : ANIL S. KILOR, J.

DATE : 22th MARCH, 2021

ORAL ORDER :-

1. In these two appeals on behalf of employer and employee
the challenge is raised to the Judgment and order passed by the

Commissioner for Workmen's Compensation dated 26-09-2017, partly allowing the claim of the appellant in First Appeal No. 3620 of 2010 and respondent in First Appeal No. 4778 of 2017 and thereby holding him entitled for compensation amount of Rs.3,90,348/- along with 12% interest.

2. I have heard learned counsel for respective parties.

3. Brief facts of the present case are as under (the parties are referred as per their status before the Commissioner, Workmen's Compensation).

4. The claimant – Sk. Mois Sk. Salim preferred an application under Sections 3, 4 and 22 of the Employees Compensation Act, 1923 before the Commissioner Workmen's Compensation for grant of compensation to the tune of Rs.10,75,200/-.

5. It is the case of claimant that, he was working as "Plant Labour" and on 27-06-2014, when he was cleaning mixer machine (Chipping), the respondent started mixer machine, due to which, he sustained serious injuries to liver, kidney and Esophagus and several parts of the body. He was indoor patient in Dhoot Hospital and was operated several times by the concerned Doctor. It is the case of the claimant that he suffered permanent disability because damage of his liver, kidney and esophagus and as such he lost 100% earning capacity.

6. Respondents No.1 and 2, who are appellants in First Appeal No. 4778 of 2017, filed their written statement and opposed claim of the claimant on the ground that there is no statutory obligation on them to pay compensation. They submitted that Doctor has certified that the claimant is fit to resume duty, thus, the claimant is not entitled for any compensation.

7. The Commissioner after scrutinizing oral as well as documentary evidence available on record held that the respondents No. 1 and 2 are jointly and severally liable to pay compensation to the tune of Rs.3,90,438/- along with interest to the claimant.

8. The said Judgment and order dated 26-09-2017 is under challenge in First Appeal No.4778 of 2017 at the behest of respondents No. 1 and 2 on the ground that the claimant is not entitled for any compensation whereas said Judgment and order is under challenge in First Appeal No. 3620 of 2019 at the behest of claimant on the ground that less amount was granted by the learned Commissioner than he is entitled for.

9. In first appeal No.4778 of 2017 Mr. Thole, learned counsel appearing for appellants submit that the certificate issued by Dr. Parmeshwar Shivilal Jaiswal, certifying 40% permanent disability of the claimant was issued on 14-01-2017 whereas the incident had taken place on 27-06-2014, thus, he submits that the learned

Commissioner has wrongly relied upon said certificate which was issued after about 2½ years of the incident, while determining the amount of compensation.

10. He further submits that nowhere Dr. Jaiswal in his deposition has stated about loss of earning capacity of the claimant. It is submitted that on the other hand, the witness has categorically deposed that the claimant is fit for light work and not fit to do heavy work. It is submitted that from the cross-examination Dr. Jaiswal, it is clear the claimant has not suffered 100% loss of earning capacity, and therefore, amount awarded by the Commissioner is based on no evidence.

11. On the other hand, learned counsel for claimant points out that medical document of 'Dhoot Hospital' is sufficient to show the nature of injuries and the disability suffered by the claimant. It is submitted that even in absence of certificate of disability any prudent man can assess the disability caused to person whose one kidney is removed, liver and Esophagus are totally damaged. It is further submitted that respondents No. 1 and 2 are not disputing the medical papers of 'Dhoot Hospital', and therefore, the compensation awarded by the Commissioner is insufficient and not just and fair. By arguing this, he prays for enhancement of compensation.

12. During the course of arguments, learned counsel for respondents No.1 and 2 draws attention to the statement made

before the Commissioner showing willingness to allow the claimant to join the duties and to assign him light work as suggested by Dr. Jaiswal in his cross-examination. In view of that, time was given to the claimant to make the statement whether he is ready to join the duties and to do a light work. Thereupon, the claimant has shown willingness to do any light work looking to his health condition, however, learned counsel for respondents No.1 and 2 after taking instructions informed to this Court that due to recession because of pandemic, though earlier, a statement was made that the claimant can be assigned work of light nature, it is not possible now to take him in employment and assign any work.

13. In that view of the matter, this Court proceeded to decide the matter on merit.

14. In the present matter, admittedly, the claimant was hospitalized and he was indoor patient in 'Dhoot Hospital', immediately after he sustained injuries on 27-06-2014, during the course of employment. There is no dispute that several times he was operated by concerned Doctor and his medical papers show that his one kidney was removed. Learned Commissioner has observed in the impugned Judgment and order the findings recorded by the Doctor, which are relevant to assess physical disability of the claimant.

15. The physical disability, according to Dr. Jaiswal is to the extent

of 40% which was assessed on the basis of medical papers relating to claimant and prepared by 'Dhoot Hospital', during the treatment of the claimant. Therefore, though Dr. Jaiswal issued disability certificate after 2½ years of the incidents, it will not take away its efficacy for the purpose of taking into consideration permanent disability of the claimant.

16. It has come on record that the claimant is not in position to do any heavy work, to which there is no challenge on the part of respondent Nos.1 and 2. The respondents No. 1 and 2 are not disputing medical papers of 'Dhoot Hospital', which are sufficient for any prudent man to understand seriousness of the damage caused to the Kidney, liver and Esophagus and other parts of the claimant.

17. Thus, considering all these aspects, learned Commissioner has rightly come to the conclusion that there is no 100% loss of earning capacity and accordingly amount of compensation was determined.

18. The witness of the claimant, Dr. Jaiswal in his cross-examination has categorically deposed that the claimant is able to do the light work but not heavy work. Thus, this oral evidence is sufficient to hold that the claimant has not suffered 100% disability to earn his livelihood as such looking to his loss of earning capacity, due to impact of injuries caused to him, the compensation granted by learned Commissioner is just and fair.

19. In that view of the matter, I do not find any fault with findings recorded by learned Commissioner. None of the appellants could point out any perversity in the impugned Judgment and order.

20. Thus, having considered oral as well as documentary evidence available on record and having considered the findings recorded by learned Commissioner, I am of the view that no interference is required in present matters, as both these appeals are devoid of substance. Accordingly, I pass the following order.

:: O R D E R ::

- (i) Both the appeals are dismissed.
- (ii) The claimant is permitted to withdraw the amount of compensation deposited by respondents No. 1 and 2 before the Labour Court, Aurangabad along with interest accrued thereon, if any.
- (iii) In view of dismissal of both the First Appeals, pending Civil Applications do not survive and stand disposed of accordingly.
- (iv) No order as to costs.

**(ANIL S. KILOR)
JUDGE**