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1] Mehboob Fatulllal Shaikh	)	
Aged about 48 years, occupation	)	
nil, Residing at Anand Nagar,) Room No.62, Near Darga, G.B.	)	
Road, Kasarwadawali, District	)	
Thane.	)	
	)	
2] Shakil Kadir Varekar @	)	
Warekar R/at S.K. House, Near	)	
Jama Masjid, Kasarwadawali,	)	
Ghodbunder Road, District	)	
Thane – 400 0615	)	
	)	
3] Mr. Navis Shakil Varekar	)	
R/at S.K. House, Near Jama Masjid)	)	
Kasarwadawali, Ghodbunder Road,)	)	
District Thane – 400 0615	)	 Respondents.

Mrs. Varsha Chavan for the Appellant in FA/1040/2017 and for Applicant in Civil Application No.2077 of 2016

Mrs. Rina Kundu for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 14, 2021

ORAL JUDGMENT:

1] The Insurance Company has preferred this appeal questioning the compensation awarded under Section 30 of the Workmen Compensation Act, 1923 (hereinafter referred to as “the Act” for the sake of brevity) by the Commissioner.

2] By consent of the parties, appeal is taken up for final disposal.

3] The Respondent No.2 is an owner of the vehicle i.e. dumper No.MH/04-DK-8213 involved in the accident, which was entrusted to Respondent No.3 on 9/1/2012. Respondent No.1, labour, was hired for loading and unloading bricks, had suffered an

accident as the said dumper was dashed by Lorry No. MH-04/CU-2981. As a consequence of aforesaid accident, dumper turned turtle and Respondent No.1 suffered serious head injury, fracture of right wrist, fracture of left neck femur etc. Respondent No.1 remained in hospital from 9/1/2012 to 23/1/2012 during which time, he claimed to have spent about Rs 4,00,000/- for treatment. Contending that he was getting Rs 250/- per day i.e. Rs 7,500/- per month and loss of 100% earning capacity, claim for compensation came to be initiated. The said claim was allowed by the judgment/order impugned dated 14/10/2015 by the Commissioner for Workmen's Compensation and Judge, First Labour Court, Thane. As such, this Appeal.

4] Learned Counsel for the Appellant/Insurance Company while questioning the award of compensation would urge that in respect of claim for compensation, the Respondent No.1/claimant has examined in all three doctors i.e. Dr. Ghanshyam Gaikwad at Exh.

U-20, who has deposed on the disability of the claimant, Dr. Jayesh Nayak at Exh. U-24, who has treated the claimant at City Life Hospital and Dr Pradeep Tripathi at Exh. U-27 who has assessed disability to the extent of 40%. According to the learned Counsel, Tribunal ought not to have awarded compensation, particularly having regard to the fact that the doctor who treated the claimant, in general, has issued disability certificate liberally so as to claim unreasonable compensation. According to her, if the evidence of claimant's witnesses referred to above i.e. doctors is taken into account, cumulative effect is, disability claimed cannot be inferred. So as to discard the said disability certificate, support is drawn from the Judgment of the Apex Court in the matter of *Raj Kumar vs. Ajay Kumar* and another reported in **2011 ACJ 1 SC**. Relying on the aforesaid judgment, the learned Counsel would urge that the disability certificate as such, ought not to have been relied on to assess degree of loss of earning. That being so, Tribunal committed an error in not independently assessing the loss of earning.

5] The next contention of the learned Counsel for the Appellant is, a proviso to Section 147(1)(b) of the Motor Vehicles Act does not permit fastening of liability of penalty on the Insurance Company as it is primary responsibility of the owner of the vehicle to make good such payment of penalty. In support of this contention, she relied on the judgment of the Apex Court in the matter of *Ved Prakash Garg vs. Prema Devi and Others* reported in **1998 ACJ 1 SC**.

6] While countering the submissions, the learned Counsel for Respondent No.1/claimant would support the award.

7] With the assistance of the respective learned Counsel, I have perused documentary evidence in the form of medical record and the oral evidence of the witnesses which is produced by the Appellant. The vehicle owner Opponent No.1 to the Claim

Petition in para 5 of the Written Statement has admitted the employment of the claimant, accident, injuries suffered and the treatment administered. Para 5 of the said Written Statement reads as under:-

“5. With reference to Para 4 it is true that on 9.1.2012 Shri Mehboob Fatullal Shaikh was returning from Virar towards Kasarwadavali in Dumper No. MH-04-DK-8213 along with other laborers, after loading bricks from Virar. When they reached Ahmadabad Highway, in the precincts of Navagargaon, near Royal Garden Hotel, Valiv, Vasai, one Motor Lorry no. MH-04-CU-2981 came from behind and dashed Dumper No. MH-04-CU-2981 and climbed on the divider. Due to the dash to the Dumper, Dumper turned turtle and dashed one tempo which was going ahead of Dumper, Motor Dumper no MH-04-CU-2981 overturned and all laborers came under the bricks of dumper and sustained serious injuries. Shri Mehboob

Fatullal Shaikh was taken to City Life Hospital in an unconscious state. He was admitted there from 9.1.2012 to 23.1.2012. Doctor operated his injuries. Then he has transferred to Titan Hospital, Manpada, Thane. He was admitted there from 23.1.2012 to 18.02.2012.”

The Appellant/Insurance Company in its Written Statement has denied the claim, including age of the claimant. It has also denied relationship of employer and employee so also the earning of the claimant. It is claimed that disability certificate is unreliable. As such, it can be noticed that the Appellant has denied entire claim of the claimant in its Written Statement.

8] So as to establish the claim, evidence at Exh. U-5 was brought on record by the claimant and established the fact of accident. As a victim of the incident, he has specifically stated about the accident in question and also about the nature of injuries suffered in the said accident. From the police papers and testimony of claimant it has

been established that claimant was in employment of Opponent No.1. In the accident, serious injuries were suffered by the claimant on 9/1/2012. It is also brought on record that claimant was initially hospitalized from 9/1/2012 to 23/1/2012 in City Life Hospital and thereafter for further treatment in Titan Hospital from 23/1/2012 to 18/2/2012. It is brought on record that the claimant was discharged from the Titan Hospital on 18/2/2012.

9] Though the claimant has alleged that he was 48 years old on the date of accident, however, it is reflected in the medical papers that on the date of the accident, his age was 60 years and same was rightly so taken into account by the Tribunal while awarding compensation. In view of the pleadings in Written Statement of the vehicle owner, it is established that the claimant was earning Rs 250/- per day i.e. Rs 7500/- per month.

10] So as to establish nature of injuries, disability and the loss of

earning, the claimant has examined Dr. Ghanshyam Gaikwad at Exh. U-20 who has assessed disability claim to the extent of 40%, Dr. Jayesh Nayak at Exh. U-24 who is claimed to have treated the claimant at City Life Hospital has established that total bill of the hospital was around Rs 1,65,035/- against which an amount of Rs 1,58,035/ was paid. Dr. Pradeep Tripathi at Exh. U-27 has deposed that bill of Rs 2,26,800/- was paid to Titan Hospital in Thane in addition to the bill of City Life Hospital of Rs 1,58,035/-. The disability certificate in categorical terms speaks of the complaint of pain in the hip joint, difficulty in walking, pain in wrist, difficulty in working with the help of wrist etc.

11] Considering the nature of injuries, post medical care, restrictions on the working capacity of the claimant, disability was rightly assessed at 40%, however loss of earning was assessed at 100% which appears to be justified. The view expressed by the Tribunal is based on the material available on record.

12] As far as the issue about his non-proving of disability certificate is concerned, this Court cannot be insensitive to the evidence of three doctors who were examined by the claimant. Each of the doctors, based on the documents from City Life Hospital produced at Exh. U-10, Discharge Card of the Titan Hospital brought on record at Exh. U-11, further treatment papers produced at Exh. U-12 and U-13 from Titan Hospital, prescriptions from both these Hospitals at Exh. U-14 and 15, brain scan report dated 9.1.2012 at Exh. U-17 certified 40% disability. Dr Jayesh has specifically stated about serious injuries suffered by claimant in the accident, fracture of left femur of neck, right wrist joint and also head injury. He has also stated that the claimant was brought in unconscious state and as such was required to be intubated as was unable to breath on his own. The claimant was subjected to C.T. brain immediately on 9/1/2012 which demonstrated tiny haemorrhagic contusion left frontal right

matter. His MRI brain was repeated on 11.1.2012 which demonstrates multiple tiny haemorrhagic contusion in left frontal and right parietal region with focal tiny contusion in right temporal region. He has also deposed that the claimant was in ICU from 9th to 23rd January, 2012. However, he got discharged for financial reasons. The cross-examination of this witness does not yield any material in favour of the Appellant/Insurance Company. Similarly, Dr. Pradeep has stood on the same line of evidence as has been given by Dr. Jayesh. Dr. Ghanshyam, an Orthopaedic Surgeon, having experience of more than 32 years, has assessed the disability based on medical examination and papers. He has specifically stated about injuries based on the medical and treatment related documents which were made available to him and has rightly certified the disability to the extent of 40%. In his cross-examination also, the Insurance Company cannot yield any material to demolish the case of the claimant. Rather evidence of Dr. Ghanshyam in detail speaks of nature of injuries suffered,

restrictions on the claimant in performing his day-to-day work and that he was not in a position to discharge the labour work so as to earn his bread and that being so, loss of earning was rightly assessed at 100%. In the aforesaid backdrop, support drawn by the learned Counsel for the Appellant from the judgment of the Apex Court in the case of *Raj Kumar* cited supra will be hardly of any assistance. Apart from above, perusal of the Written Statement of the Appellant/Insurance Company neither speaks of defence of contributory negligence on the part of the claimant in the accident in question nor investigation papers as were produced from the custody of the police authorities speak of any such conduct on the part of the claimant. As such, claim that the penalty ought not to have been saddled on the Appellant will be hardly of any consequences. Be that as it may, it can be inferred from the record that the penalty was on vehicle owner and driver and not on the Insurance Company.

13] In the aforesaid background, no case for interference is made out. Appeal as such fails and same stands dismissed. Consequently, Civil Application taken out therein does not survive and the same is also disposed of.

(NITIN W. SAMBRE, J.)