

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 299 OF 2017

Rudal Lorik Yadav

.. Appellant

Vs.

Tanaji Appa Nikam & Anr.

.. Respondents

.....

Mr. Uday Mehta a/w Mr. D.S. Joshi for the appellant

Mr. Rahul Mehta i/b KMC Legal Venture for respondent no.2 –
insurer

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 2nd MARCH, 2021

P.C.

1. Challenge in this appeal is to a judgment and award passed by the Member, M.A.C.T., Mumbai in Application No. 257 of 2007, dated 4th August, 2016.

2. The learned Member, M.A.C.T. by the impugned award granted compensation of Rs.2,82,200/- to the applicant with interest @ 7.5% p.a. from the date of the application till realisation of the amount including the amount under NFL.

3. Heard Mr. Uday Mehta, learned Counsel for the appellant. The impugned judgment and award has been assailed by the learned Counsel mainly on the following two aspects :-

(a) The learned Member, M.A.C.T. has not considered and appreciated the evidence as regards income of the applicant,

despite filing a public document in the form of Income Tax Refund order issued by the Income Tax Department on 6th July, 2006, indicating that an amount of Rs.13,676/- was refunded to the applicant. It is submitted that the learned Member has erred in taking the income of the applicant to the tune of Rs.6,000/- p.m. only, whereas, in fact, the applicant was earning Rs.1,00,000/- per month. It is also brought to my notice by Mr. Uday Mehta, learned Counsel for the appellant that despite issuing a summons to the Income Tax Officer, namely; Mr. Bipin Kumar, he did not turn up to give evidence in order to substantiate the document of refund tendered by the applicant.

(b) The second ground is that the learned Member has erred in assessing disability of the applicant only to the extent of 10%, whereas, the Medical Certificate issued by an Orthopaedic Surgeon namely Dr. Narresh M. Khanna at page 75 reveals that the Medical Expert has assessed the disability of the applicant to the extent of 38%.

4. Mr. Rahul Mehta, learned Counsel for respondent no.2 opposes the appeal.

5. Having considered the evidence and the findings returned by the learned Member, at this stage, it would be just and proper in the interest of justice to remand the matter to the learned M.A.C.T., Mumbai in order to give an opportunity to the applicant to prove his income by adducing evidence, including the evidence of Income Tax Officer. The learned Member, MACT shall also give an opportunity

to establish his disability by examining the treating Doctor.

6. The exercise of examining the witnesses on the point of income and disability shall be concluded within a period of 12 weeks from the receipt of the order of this Court.

7. The learned Counsel for the respondents shall co-operate with the Tribunal in disposing of the application as expeditiously as possible.

8. Parties shall appear before the M.A.C.T. Mumbai (CR.No.6) on 5th April, 2021 at 11.00 a.m.. The learned Member shall, thereafter proceed further in accordance with law and in the light of the observations made hereinabove.

9. In view of the above, the appeal stands disposed of.

(PRITHVIRAJ K. CHAVAN, J.)