**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**

**NAGPUR BENCH, NAGPUR**

**FIRST APPEAL NO. 1100 OF 2009**

Oriental Insurance Co. Ltd.,
Through its Divisional Manager,
Divison Office No.3, Wardhaman Nagar,
Central Avenue Road, Nagpur.

...**APPELLANT**

**VERSUS**

1. Shamlal s/o Kisan Dhurve,
Aged 25 yrs, Occ: Labour,
R/o Ratnara (Gondhi Tola),
post Ratnara, Teh & Dist. Gondia.

2. Chainlal Rupchand Damahe,
Aged major, Occ: Business,
R/o Ratnara (Gondi Tola),
Post Ratnara, Teh & Dist. Gondia. ..**RESPONDENTS**

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Shri Haris Khan, Advocate h/f Shri A.M. Quazi, Advocate for appellant.
None for respondent no.1.

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| **CORAM** | : | **PUSHPA V. GANEDIWALA, J.** |
| **ARGUMENTS WERE HEARD ON** | : | **01.10.2021** |
| **JUDGMENT PRONOUNCED ON** | : | **22.11.2021** |

**JUDGMENT** :

Heard.

2. The appellant-Insurance Company has challenged the judgment and award dated 18.09.2008 passed by the Commissioner under the Workmen's Compensation Act and Labour Court at Gondia in N.F.W.C.A. No.1 of 2005.

3. Heard both the sides on the following substantial questions of law.

> "i. Whether the examination of the medical authority is necessary to ascertain the percentage of earning capacity of the injured due to the non-specified injury suffered by him ?
>
> ii. Whether the appellant-Insurance Company is liable to indemnify the insured for the amount of interest as has been directed by the learned Commissioner? "

4. The facts in nutshell leading to preferring this appeal may be stated as under:

The appellant is the insurance company with which the offending vehicle i.e. tractor bearing registration No. MH-30/A-8636 was insured. Respondent no.1 is the claimant while respondent no.2 is the owner of the offending vehicle. Respondent no.1 claimant filed a proceeding under Section 4 and 22 of the Workmen's Compensation Act, stating therein that he was in the employment of respondent no.2 for the work of loading and unloading of the material on the offending vehicle tractor MH-35/A-8636. On 02.03.2001 at about 3 to 4 pm the said tractor was carrying *murum* and after unloading the said material, the claimant was sitting alone at the boundary-wall of the house waiting for the return of the tractor and at that time the driver drove the said vehicle and dashed to the wall, due to which the claimant suffered injuries to his leg and hip. He was taken to the KTS Hospital, Gondia. The accident was reported to the Police Station, Gondia City, Gondia and crime was registered against the driver of the said vehicle. The claimant claimed that due to accident his movement got restricted and he is required to walk with the help of a stick. He stated that he was getting daily wage of Rs.75/-. He claimed compensation along with 50% penalty and interest.

5. In response, the appellant Insurance Company filed its reply below Exhibit 33 and resisted the claim petition. The appellant denied that the claimant was the employee of the owner of the insured vehicle to load and unload the material on daily wages of Rs.75/- and Rs.2,250/- per month as alleged in the petition. The appellant Insurance Company also denied the occurrence of the incident and loss of 90% earning capacity of the claimant due to the accident. In its specific pleading the appellant insurance company stated that the claimant at his own negligence suffered the injuries and there is no fault on the part of the driver and owner of the vehicle.

6. Respondent no.2, the owner of the vehicle in his written statement denied his liability to pay any compensation. He also denied the fact that the claimant was his employee on his tractor to load and unload the material at Rs.75/- per day and Rs.2,250/- per month. This respondent also denied the occurrence of the incident.

7. The learned Commissioner framed necessary issues below Exhibit 37 and recorded the evidence as adduced by the parties. The claimant examined himself and also examined one witness by name Dilip Motilal Dhurve as an eyewitness. The claimant has also brought on record the First Information Report (Exhibit 39), Spot Panchanama (Exhibit 40), MLC (Exhibit 41), Disability Certificate showing his permanent disability as 60% (Exhibit 42), Form AA (Exhibit 43), Insurance policy (Exhibit 44), legal notice (Exhibit 45). Owner examined himself at Exhibit 49. The appellant Insurance Company preferred not to examine any witness.

8. Learned Commissioner after considering oral and documentary evidence, allowed the claim petition and directed the owner and insurer jointly and severally to deposit the amount of compensation of Rs.2,70,592/- within a period of two months with interest at the rate of 12% p.a. from the date of accident till its realization. Owner is also directed to deposit penalty at the rate of 50% on the compensation with the Commissioner.

9. This judgment of the learned Commissioner under Workmen's Compensation Act is the subject matter of challenge in this appeal.

10. I have heard learned counsel Shri A.M. Quazi appearing on behalf of appellant-Insurance Company. None present for respondent no.1/claimant and none appeared for respondent no.2 despite due service.

11. Learned counsel appearing on behalf of the appellant raised a question that the Doctor, who assessed the workman, has not given any certificate regarding the loss of earning capacity in terms of Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923. As per Section 4(1)(c)(ii) of the Act, the Doctor has to assess the loss of earning capacity of the workman which is not done in this case. It is submitted that the medical officer alone is competent to fix the loss of earning capacity of a workman within the meaning of the aforesaid provision. Since in the present case, the Doctor has not assessed the loss of earning capacity, therefore, according to the learned counsel, suo motu fixation by the Assistant Labour Commissioner regarding the loss of earning capacity is improper, irregular and not in consonance with the provisions of the Act, as such cannot be sustained. It is further urged that in the absence of examination of the medical officer to ascertain the percentage of earning capacity of the injured claimant, the learned Commissioner ought not to have considered the same at 90% earning loss to the claimant and granted compensation accordingly. Second point as has been argued by the learned counsel is that the learned Commissioner ought not to have saddled the responsibility of payment of interest on the appellant/insurer and the appellant is not liable to reimburse the insured the amount of interest.

12. I have perused the record and considered the submissions put forth on behalf of the appellant.

13. At the outset before proceeding to appreciate the contentions, it needs to be kept in mind that Workman's Compensation Act, 1923, is a piece of welfare legislation intended to provide immediate relief to an injured workman or the dependants of a deceased workman who is injured or meets his death by an accident arising out of and in the course of his employment. A reference in this regard to the judgement of Hon'ble Supreme Court in the case of **Golla Rajanna Vs. The Divisional Manager** reported in **(2017) 1 SCC 45**, would be relevant. Paras 9 and 10 of the judgment read thus:—

> *"9. The Workmen's Compensation Commissioner, having regard to the evidence, had returned a finding on the nature of injury and the percentage of disability. It is purely a question of fact. There is no case for the insurance company that the finding is based on no evidence at all or that it is perverse. Under Section 4(1)(c)(ii) of the Act, the percentage of permanent disability needs to be assessed only by a qualified medical practitioner. There is no case for the respondents that the Doctor who issued the disability certificate is not a qualified medical practitioner, as defined under the Act. Thus, the workmen's compensation Commissioner has passed the order based on the certificate of the disability issued by the Doctor and which has been duly proved before the Workmen s Compensation Commissioner.*
>
> *10. Under the scheme of the Act, the Workmen's Compensation*

*Commissioner is the last authority on facts. Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded in its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act.*"

14. In the case in hand, on the basis of evidence on record, the learned Commissioner has recorded the finding that the claimant was serving as a labour with the owner of the tractor for loading and unloading *murum* on his tractor bearing No. MH-35/A-8636 and has met with an accident on 02-03-2001 during the course of employment.

15. With regard to loss of earning capacity, admittedly, the case of the claimant falls under non-scheduled injury. The claimant has to prove his loss of earning capacity suffered by him on account of the accident as per Section 4(1)(c)(ii) of the Act. To substantiate his claim, the claimant has brought on record the disability certificate Exh. 42 dated 01-01-2004, issued by the Medical Board for physically handicapped, General Hospital, Gondia, certifying 60% permanent physical disability of the injured/claimant. It is the contention of the learned counsel for the appellant that the examination of

the medical officer is indispensable for determining the loss of earning capacity of the injured employee. It is difficult to accede to this contention. The competency of the Commissioner of Labour and the medical practitioners are different and independent. Thus, the medical practitioners are empowered to issue disability certificate and the percentage of disability is to be mentioned in the certificate. Based on the percentage of disability assessed by the medical practitioner, the Commissioner of Labour has to take into consideration all other factual aspects including the monthly income and the age of the workman and thereafter, calculate the total compensation to be paid and this would be the procedure as contemplated under the Act and therefore, the contention of the learned counsel for the appellant in this regard deserves no merit consideration.

16. As per Section 4 (1)(c)(ii) of the Act, "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". The provision is clear and unambiguous. Therefore, the disability percentage assessed by the Doctor must be taken into consideration for fixing the loss of earning capacity. That is the spirit of Section and that must be the purpose and object of the provision enabling the authorities to fix the compensation in commensuration with the disability assessed by the Doctor. In other words, the disability assessed by the Doctors and the loss of earning capacity to be fixed by the competent authority must be nearer and in commensuration with

the disability percentage in order to avoid grant of excess compensation or lesser compensation. The provision contemplates that the Doctors must assess the disability. The medical practitioners are certainly not competent to assess the loss of earning capacity which is not relatable to the medical profession. The very intention of the provision is to ensure that the 'just compensation' is awarded. That being the purpose and object of the provisions, the Courts are bound to interpret that the objects sought to be achieved are achieved. Once the qualified Doctor assessed the disability, such a disability percentage is to be taken into consideration for the purpose of assessing the loss of earning capacity of the workman. This being the possible interpretation which is constructive to reach the object of the Act, this Court is of the opinion that the very interpretation offered by the learned counsel for the appellant deserves to be rejected.

17. As the certificate was issued by the medical board and the same is duly proved by the claimants and in view of the dictum laid down by the Hon'ble Apex Court in the case cited supra, there is no substance in the contention urged by the Learned Counsel for the appellant. The learned Commissioner relying on Schedule 1, part-II Section (1) and (4) of the Act, recorded the findings that the injury caused permanent partial disablement and caused loss of earning capacity to the tune of 90%. I answer this question in the negative.

18. The next question with regard to the direction to the appellant insurance company to pay interest on the amount of compensation, the liability of the insurance company emanates from the terms and conditions of the contract of insurance. The learned counsel for the appellant could not point out from the terms and conditions of the insurance policy that the insurer is not liable to reimburse the insured the amount of interest calculated on the amount of compensation, which is payable to the claimant. For the reasons aforestated, the answer both the points accordingly. No good grounds are made out to interfere with the well reasoned order passed by the Learned Commissioner. Consequently, the appeal is liable to be dismissed, inasmuch as, the same is devoid of merit.

**JUDGE**

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