

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 530 OF 2014

Ashok Raybhan Kashide,
Age : 33 years, Occu : Nil,
R/o Borja, Tq: Aundha Nagnath
Dist: Hingoli.

...Appellant
(Orig. Claimant)

Versus

1. Shivaji S/o Parbatrao Dhale
Age: 36 Years, Occu: Business,
R/o: Basamba, Tq & District: Hingoli.
(Owner of Tempo no MH 26 H 6590)

2. United India Insurance Co. Ltd.,
Branch Manager,
Daywan Complex, Station Road,
Parbhani, Tq. & District : Parbhani.

...Respondents
(Orig. Respondents)

Mr Pavankumar S. Agrawal, Advocate for Appellant
Mr Suhas R. Sirsath, Advocate for Respondent No.1
Mr Vinodkumar R. Mundada, Advocate for respondent No. 2

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 24.11.2021
PRONOUNCED ON : 13.01.2022

JUDGMENT :

1. This appeal is directed against the impugned Judgment and award passed in NFA No. 24/2012 by the Civil Judge, Senior Division and Commissioner for Employees Compensation, Hingoli by taking aid of Section 23 of the Employees' Compensation Act, 1923.

2. Brief facts giving rise to this appeal are as under :-

(a) The appellant/original claimant was working as a labour on the vehicle/tempo bearing Registration No. MH-26-H-6590 owned by respondent No. 1. He was getting monthly salary of Rs. 6,000/- per month. The appellant along with other labours Bajirao Maske, Shaikh Rafik and Sandeep Ubale were discharging their duty on the vehicle on 04.04.2012 at 11.00 a.m. They went to Kabra Marbles, Hingoli. Arvind Wadkute was driving the vehicle. After loading the goods in the vehicle, they arrived at the house of one Mr Patil. The appellant along with other labours were unloading the goods. While unloading the goods, one sheet of granite fell down on the right leg of the appellant. The right leg of the appellant was fractured. Another labour Bajirao Maske also sustained fracture injury to his right hand. The appellant was taken to Naik Hospital at Hingoli. It was a crush injury to right leg of the appellant. The appellant was admitted in the said hospital from 04.04.2012 to 29.04.2012. The right leg of the appellant came to be amputated. According to the appellant, it is a case of 100% permanent disability and it is a loss of 100% earning capacity. However, the learned Civil Judge, Senior Division and Commissioner for Employees Compensation has determined permanent disability to the extent of 75% and awarded compensation of Rs. 3,66,930/- including expenses of medical treatment etc.

(b) Feeling aggrieved by the impugned Judgment and Award passed by the learned Civil Judge, Senior Division and Commissioner of Employees Compensation, the appellant has preferred this appeal.

3. Heard Mr Pavankumar Agrawal, learned counsel for the appellant/original claimant, Mr Suhas Sirsath, learned counsel for respondent No.1 and Mr Vinodkumar R. Mundada, learned counsel for respondent No.2/United India Insurance Co. Ltd.

4. Mr Agrawal, learned counsel for the appellant took me to the relevant paras of the impugned Judgment and coupled with the evidence. He submitted that right leg of the appellant is amputated. Even though Dr. Bhagwan Pundge has stated that appellant's disability is 75% and disability certificate to that effect is issued vide Exh. 24, it is a case of 100% loss of earning capacity. The appellant was working as a labour. Due to amputation of his right leg, he is unable to discharge his work as a labour. The appellant is entitled to get compensation by holding that it is a case of 100% loss of earning capacity.

5. Mr Agrawal, learned counsel for the appellant further invited my attention that the learned Civil Judge, Senior Division and Commissioner of Employees Compensation has awarded interest @ 6% per annum which is incorrect in the eye of law. He invited my attention to Section 4-A (3) (a) of the Employees Compensation Act, 1923. As per Section 4-A(3) (a), the appellant/original claimant is entitled to get interest @ 12% per annum. He submitted that the impugned award passed by the learned Civil Judge, Senior Division and Commissioner of Employees Compensation needs to be modified by holding that it is a case of 100% loss of earning capacity.

6. Mr Agrawal, learned counsel for the appellant/original claimant has placed his reliance on following citations in support of his argument :-

(i) ***Pratap Narain Singh Deo Vs. Shrinivas Sabatra and Another reported in AIR 1976 SC 222 (1975 STPL 3704 SC)***

(ii) ***Shri Chanappa Nagappa Muchalagoda Vs. Divisional Manager, New India Insurance Company Limited reported in AIR 2020 SC 166 (2019 STPL 13944 SC)***

7. Mr Mundada, learned counsel for respondent No. 2 supported to the findings recorded by the learned Civil Judge, Senior Division and Commissioner of Employees Compensation as well as amount of compensation. He submitted that it is not a case of 100% loss of earning capacity. He invited my attention to the evidence of PW No. 2 - Dr Bhagwan Pundge and disability certificate vide Exh. 24. He submitted that the appellant/original claimant is suffering from 75% permanent disability and it is not a case of 100% loss of earning capacity. The learned Civil Judge, Senior Division and Commissioner of Employees Compensation has rightly assessed the compensation at Rs. 3,66,930/-. There is no need to enhance compensation. However, Mr Mundada, learned counsel for respondent No. 2 fairly conceded the legal position about awarding interest on the compensation @ 12% per annum in view of Section 4-A(3) (a) of the Employees' Compensation Act, 1923.

8. Having regard to the argument advanced by the learned counsel for both the sides, I have gone through the Judgment and Award passed in NFA No. 24/2012 by the the learned Civil Judge, Senior

Division and Commissioner of Employees Compensation, Hingoli. I have also perused the evidence tendered before the learned Civil Judge, Senior Division and Commissioner of Employees Compensation.

9. On perusing the relevant part of the impugned Judgment and evidence on record, it would be clear that at the relevant point of time, the appellant/original claimant was working as a labour on the vehicle bearing No. MH-26-H-6590 owned by respondent No. 1. Respondent No. 1 had engaged the appellant/original claimant as a labour and while unloading the goods from the vehicle of respondent No.1, the appellant sustained injuries. The appellant/original claimant was taken to the hospital. The appellant has also examined PW No. 1 Dr. Bhagwan Pundge vide Exh. 23. The appellant had sustained crush injury, fracture to femur and tibia fibula with neuromuscular injury, with above knee amputation right lower limb. The right leg of the appellant is amputated. The learned Civil Judge, Senior Division and Commissioner of Employees Compensation has accordingly recorded the findings on the basis of evidence. Those findings are found correct.

10. The controversy is about loss of earning capacity of the appellant. Whether it is a case of loss of 100% earning capacity due to amputation of right leg of the appellant. Dr Bhagwan Pundge has issued disability certificate in this case vide Exh. 24. Dr Bhagwan Pundge has assessed the permanent disability of the appellant at 75%. PW No. 2 Dr Bhagwan Pundge while facing the cross-examination has stated that the appellant can work with his hands. Dr Pundge has not given clear opinion

in this case whether it is a case of 100% loss of earning capacity. As such, the learned Civil Judge, Senior Division and Commissioner of Employees Compensation has arrived at conclusion that it is not a case of 100% loss of earning capacity. It is a case of permanent disability of 75% while recording finding against issue No. 4.

11. The learned Civil Judge, Senior Division and Commissioner of Employees Compensation seems to have given undue importance about unambiguous opinion given by Dr Bhagwan Pundge. It is a case of amputation of right leg of the appellant, which has direct impact on the earning capacity of the appellant/original claimant. He was working as a labour on the vehicle. He was discharging the duty of loading and unloading goods. He needs his two legs and both hands to discharge the work. Now, because of right leg amputation, the appellant/original claimant is certainly unable to discharge his work as a labour though his both hands are good. The observations made by the learned Civil Judge, Senior Division and Commissioner of Employees Compensation placing reliance on the permanent disability certificate of the appellant are improper and incorrect. The learned Civil Judge, Senior Division and Commissioner of Employees Compensation has arrived at incorrect conclusion by placing much more reliance on the evidence of PW No. 2 Dr Bhagwan Pundge coupled with the permanent disability certificate. When it is proved factually by the appellant that it is a case of loss of 100% earning capacity why one need help of expert opinion like Doctor. The facts are very much clear and unambiguous focusing the light on the loss of earning capacity of the appellant.

12. In case of ***Shri Chanappa Nagappa Muchalagoda Vs. Divisional Manager, New India Insurance Company Limited*** (supra), the Hon'ble Supreme Court has held about the direct impact on the functional disability of the appellant/original claimant. In the cited case, the appellant/original claimant was working as tanker driver. He met with an accident and suffered 37% disability in his whole body. He could not perform the work as a tanker driver any longer. The Commissioner held that it was a disability of 50%. The High Court increased the same to 60%. The Hon'ble Supreme Court after appreciating the evidence on record and facts of the case held that it was a case of 100 % functional disability of the appellant/original claimant and accordingly awarded the compensation.

13. In case of ***K. Janardhan Vs. United India Insurance Co. Ltd., (2008) SCC 518***, the Hon'ble Supreme Court has examined the loss of earning capacity in a case of a tanker driver who had met with an accident and lost one of his legs due to amputation. The Commissioner for Workmen's Compensation assessed the functional disability of the tanker driver as 100% and awarded compensation on that basis. The High Court however, referred to Schedule I to the Workmen's Compensation Act, 1923, and held that loss of a leg on amputation resulted in only 60% loss of earning capacity. The Hon'ble Supreme Court set aside the judgment of the High Court, and held that since the workman could no longer earn his living as a tanker driver due to loss of one leg, the functional disability had to be assessed as 100%.

14. In case of ***Pratap Narain Singh Deo Vs. Shrinivas Sabatra and Another*** (*supra*), the Hon'ble Supreme Court after appreciating the evidence on record and facts of the case held that the original claimant/carpenter had lost 100% of his earning capacity due to amputation of his left arm above the elbow. He had become unfit for the work of carpenter.

15. In the present case, the appellant was working as a labour on the vehicle engaged by respondent No.1/owner of the vehicle. The appellant/original claimant met with an accident while discharging duty as a labour. His right leg below knee came to be amputated which has caused direct impact on his earning capacity. Now he is unable to work as a labour on the vehicle since he has lost his right leg.

16. Having regard to the legal position made clear by the Supreme Court in the above referred citations, it must be held that the appellant/original claimant has lost his 100% earning capacity. It is a case of total disablement. As such, the findings to that effect recorded by the Civil Judge, Senior Division and Commissioner for Employees Compensation need to be set aside. It must be held that it is a case of loss of 100% earning capacity and accordingly, the compensation needs to be assessed. On perusing the operative part of the order of the learned Civil Judge, Senior Division and Commissioner for Employees Compensation, Hingoli, it is noticed that the learned Civil Judge has awarded interest @ 6% per annum from the date of order till realization of amount. It is a

manifest error committed by the Civil Judge, Senior Division and Commissioner for Employees Compensation by overlooking the amending Act 14 of 1995. By amending Act, 14 of 1995, Section 9A of the Act is amended *inter alia*, fixing minimum rate of interest to be simple rate at 12% per annum.

17. Having regard to the said amendment, the appellant/original claimant is entitled to get interest under Section 4/A (3)(a) @ 12% per annum.

18. The appellant was 32 years of old when he met with an accident. He was earning salary of Rs. 6,000/- per month. Respondent No. 1/owner of the vehicle has also admitted the same by way of his written statement. The salary certificate to that effect is also duly proved which is vide Exh.22. Even then, the Civil Judge, Senior Division and Commissioner for Employees Compensation has reduced the same at Rs.4,000/- without assigning cogent reasons. There was no reason for the Civil Judge, Senior Division and Commissioner for Employees Compensation to reduce the salary from Rs.6,000/- to Rs. 4,000/- per month when quantum of salary was admitted by respondent No.1/owner of the vehicle. As such, it must be held that appellant/original claimant was getting salary of Rs.6,000/- per month.

19. The compensation to be awarded to the appellant/original claimant is worked out as under :-

- (i) The age of claimant is accepted as 32 years as per the finding recorded by the Civil Judge, Senior Division and Commissioner for Employees Compensation. As per Schedule IV of the Workmens' Compensation Act, Factor 203.85 needs to be applied having regard to the age of the appellant as 32 years.
- (ii) The monthly salary of the appellant/original claimant is held to be Rs. 6,000/- per month. According to Section 4(1) (b) of the Employees Compensation Act, 1923, where permanent total disablement results from the injury, an amount equal to sixty per cent (60%) of the monthly wages of the injured (employee) needs to be multiplied by the relevant factor. Sixty per cent of monthly wages of appellant comes to Rs. 3600.00. $\text{Rs. } 3600 \times 203.85 = 7,33,860.00$. Thus total compensation comes to Rs.7,33,860.00. It is admitted by the appellant's counsel that the appellant has withdrawn the amount of compensation of Rs. 3,66,930.00.
- (iii) The Civil Judge, Senior Division and Commissioner for Employees Compensation has awarded compensation of Rs. 3,66,930/-. After deducting the same, the appellant/original claimant is entitled to get enhanced compensation of Rs. 3,66,930/-

20. Having regard to the above reasons and discussion, the appeal needs to be allowed.

ORDER

- (A) The appeal stands allowed.
- (B) Respondent Nos. 1 and 2 shall jointly and severally pay total compensation of Rs.7,33,860/- (Rupees Seven Lakhs Thirty Three Thousand and Eight Hundred Sixty Only) to the appellant with interest @ 12% per annum from the date of application till realization of the amount. After deducting earlier payment, the appellant shall be entitled for remaining balance amount of compensation of Rs.3,66,930/- with interest @ 12 % per annum.
- (C) Respondent No. 1 shall pay 20% as penalty on the amount of compensation determined by this Court and 12% interest per annum thereon after expiry of one month from the date of Judgment and order passed by the Civil Judge, Senior Division and Commissioner for Employees' Compensation till full payment to the appellant/original claimant.
- (D) No order as to costs.
- (E) The Award be drawn up accordingly.

[SHRIKANT D. KULKARNI, J.]