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

FIRST APPEAL NO. 889 OF 2016

SHRI. MEHBOOB FATULLAL SHAIKH }
AGE ABOUT 57 YEARS, }
OCCUPATION: NIL, RESIDING AT }
ANAND NAGAR, ROOM NO. 62, }APPELLANT
NEAR DARGA, G. B. ROAD, }
KASARWADAWALI, DIST. THANE. }

V/s.

1. MR. SHAKIL KADIR VAREKAR @ }
WAREKAR. }
PRESENT ADDRESS AT S. K. HOUSE, }
NEAR JAMA MASJID, KASARWADAWALI, }
GHODBUNDER ROAD, THANE- 400615 }
(OWNER OF MOTOR DUMPER NO. }
MH-04-DK- 8213) }

2. MR. NAVIS SHAKIL VAREKAR }
S. K. HOUSE, NEAR JAMA MASJID, }
KASARWADAWALI, }RESPONDENTS
GHODBUNDER ROAD, }
THANE- 400615 }

3. UNITED INDIA INSURANCE COMPANY }
LIMITED, THROUGH ITS MANAGER, }
THANE DIVISIONAL OFFICE AT PINAK }
GALAXY, 5TH FLOOR, KAPURBAWDI }
JUNCTION, ABOVE MAHADEV HOTEL, }
KAPURBAWDI, THANE WEST, DIST. THANE, }
PIN. 400607. (INSURER OF MOTOR }
DUMPER NO. MH-04-DK-8213) POLICY }
NO. 120200/31/11/01/00000025. }
POLICY VALID FROM 24.1.2011 TO 23.4.2012 }

Ms. Rina Kundu Advocate for the Appellant
Smt. Varsha Chavan Advocate for the Respondent

CORAM : NITIN W. SAMBRE, J.

CLOSED FOR ORDERS: 16/07/2021

PRONOUNCED ON: 17/03/2022

ORAL JUDGMENT:

- 1) This Appeal is by the claimant/workman, feeling aggrieved by the award delivered by the Workmen's Compensation Commissioner.
- 2) The facts necessary for deciding the present appeal are as under.
- 3) Appellant-Claimant preferred an Appeal under Section 4 of the Workmen's Compensation Act seeking Award of compensation on the ground that he is a workman. According to him, he was employed with opponent No. 1 as a labour. On 9/1/2012, while discharging his duty as a labour, on a dumper bearing registration No. MH/04-DK-8213, lorry No. MH-04/CU-2981 gave dash from behind, as a consequence, dumper fell on him after same is overturned, resulting in he having suffered serious injuries to head, fracture of right wrist, fracture of left neck femur etc. From 09/01/2012, to 23/01/2012, he

claimed that he has spent around Rs. 4,00,000/- on his treatment. As a consequence of aforesaid serious injuries, he suffered permanent disability as such is not in a position to discharge his duties as a labour. It is claimed that he was earning per day wages of Rs. 250/- i.e. Rs. 7500/- per month and on the date of accident, his age was 48 years. As such, he has sought compensation.

4) Claim was resisted by Respondent. Opponent No. 2 to the claim petition and urged that since the claimant was working with opponent No. 1, it is opponent No. 1 who is liable to make payment of compensation. Insurer, as usual opposed the prayer for compensation and urge that compensation is not payable.

5) The Tribunal assessed the compensation at Rs. 5,28,345/- with 12% interest and 25% penalty. While awarding said compensation, Tribunal has appreciated claimant's deposition at Exhibit U-5, police papers produced on record, hospital record of City Life hospital, statement of eye witnesses from the police record.

6) Since the employer opponent No. 1 admitted the relationship so also the accident, same was considered to be proved.

7) The Tribunal then proceeded to consider the age of the

Appellant i.e. 60 years; for want of any documentary evidence based on what has been reflected in the medical record so also his earning of Rs. 7500/- per month.

8) As far as deformities suffered by the Appellant is concerned, evidence of Dr. Ghanshyam Gaikwad at Exhibit U-20 who is qualified Orthopaedic Surgeon (M.S. Ortho) from whose testimony disability was assessed at 40%. Dr. Jayesh Naik of City Life hospital where Appellant took treatment was examined at Exhibit U-24 who has deposed about bill of hospital of Rs. 1,65,035/- and discount of Rs. 7000/-. He has also deposed about the prescription of medicines.

9) Dr Pradeep Tripathi was examined at Exhibit U-27 so as to establish payment of Rs. 2,26,800/- of Titan hospital and produced medical bills to that effect on record.

10) From the evidence of aforesaid three witnesses, the Tribunal rightly recorded a finding of 100% disability of the Appellant as he is unable to discharge his work as labour due to injuries, he was found to be unable to squat, sit on left hip, cannot stand and walk for long time.

11) In the aforesaid background, Tribunal awarded total medical expenses of Rs. 3,84,835/- and further assessed compensation to be paid at the rate of Rs. 5,28,345/-

12) The contentions of learned counsel for the Appellant are, treatment papers, medical certificates from City Life hospital and discharge papers were duly produced on record. Apart from ambulance bills, surgical implants, cost of pathology reports, blood bank charges, chemist bills were duly produced which are not considered and awarded by the Tribunal. In support of the aforesaid contentions that claimant is entitled to recover the above expenses, attention is invited to specific pleadings to that effect particularly in para 5 & 9 of claim petition, discharge card contents, treatment given post surgery and medicines prescribed, cash memos by the ambulance operator, receipt of implant purchase, cost of pathological test, blood bank charges receipts so also medicine/pharmacy bills were duly produced on record. In his evidence of affidavit at Exhibit U-5, he has deposed in para 4 that he has filed discharge card, treatment papers, prescription of City Life hospital and Titan hospital along with list of documents. He has also

deposed about the payments made to scan centre, ambulance operator, cost of surgical implants, pathological test and medicines purchased by him. There is no counter to the same by the insurance company as the Appellant has not been cross examined on the said issue. The aforesaid testimony of the claimant was supported by Dr. Jayesh Naik of City Life hospital who has deposed that Appellant suffered multiple tiny hemorrhagic contusion in left frontal and right parietal region with focal tiny contusions in right temporal region. He has also deposed about the treatment administered by him. Similarly Dr Pradeep Tripathi who is examined at U-27 deposed about medical bills and treatment given. Dr. Ghanshyam Gaikwad has deposed in support of the claim and the sufferings.

13) To counter the same, insurance company has not brought on record any evidence to dislodge the claim.

14) This Court is required to be sensitive to the views expressed in First Appeal No. 717 of 1999 in the matter of **Dr. Dattatray Laxman Shinde V/s. Nana Raghunath Hire & Ors.** Para 24 of the said judgment reads thus:

“24. As far as claim of expenditure on medical

treatment is concerned, it is brought on record that the appellant was admitted in three different hospitals in Pune and in hospitals at Karad and Satara. The appellant was also admitted to the institution at Coimbatore for a period of more than two months. Lot of expenditure must have been incurred on travelling and residence of the relatives and friends of the appellant. The bills evidencing expenditure on medicines, medical treatment, special diet, travelling expenses and residence of the relatives and friends of the appellant have been produced on record. There are four lists of documents marked as 85/1 to 85/4. Along with the said four lists, voluminous original documents such as bills, vouchers etc have been produced on record. As expected, none of the documents were admitted by the respondent no. 3. Perhaps the respondent no. 3 wanted that large number of witnesses should be examined to prove the documents. In the examination in chief, the appellant has made a reference to all the bills and vouchers. The Tribunal constituted under the said Act is not bound by strict rules of evidence. Therefore, the said bills and vouchers ought to have been taken into consideration by the Tribunal in absence of the specific case made out that the documents were fabricated. The total amount reflected from the said bills and vouchers is Rs. 1,54,526/-, which can be rounded off to Rs.

1,55,000/- . Therefore, no separate amount can be awarded by the Tribunal for purchasing equipment such as chair, water bed etc.”

15) In the aforesaid background, it was expected of the Tribunal to accept medicine/pharmacy bills/cash receipts which were produced by the Appellant towards payment of ambulance charges, purchase of surgical implants, blood bank charges, pathological test charges, City scan and MR scan charges and medicine charges.

16) Tribunal has committed an error thereby not accepting said bills and allowing the claim for the same, though Appellant has established his case to that effect. Even the doctors who were examined have also deposed in support of the claim of the Appellant about medical treatment administered to him and medicines which he was administered as reflected from discharge card of the hospital. That being so, claimant in my opinion is entitled for ambulance charges, surgical implant charges, pathology charges, blood bank charges and chemist bill details of which are as under:

A. Ambulance bill cum receipt of Rs. 3500/- issued by Siddhivinayak Ambulance Service dated 09/01/2012.

B. Ambulance bill cum receipt of Rs. 3500/- issued by Siddhivinayak Ambulance Service dated 09/01/2012.

C. Surgical Implants purchase receipt of Rs. 8000/- issued by Sahil Enterprises dated 01/02/2012.

D. Blood, Urine test pathology bill cum receipt of Rs. 800 + 230 + 150 + 1000 + 240 + 940 + 400 = Total Rs. 3760/- issued by Titan Pathology Laboratory (7 nos.).

E. Blood Bank charges bill cum receipt of Rs. 1000 + 1000 + 1000 + 250 = Total Rs. 3250/- issued by Bloodline Titan Pathology Laboratory (4 nos.).

F. Chemist bill of Rs. 1,28,293/- (93 nos. bills).

Total of the above bills amounting to Rs. **150303/-**

17) In that view of the matter, since the claimant's entitlement to the aforesaid charges is proved from his oral evidence so also from documentary evidence, Appeal is partly allowed. It is directed that claimant will be entitled to amount of Rs. **1,50,303/-** towards medical expenses with interest @9% from the date of expiry of one month from the date of accident as provided under Section 4 of Workmen's Compensation Act.

- 18) Let the aforesaid amount be deposited by the insurance company before Commissioner, Workmen's Compensation at Thane Court by 30/04/2022 to which claimant will be entitled to withdraw.
- 19) The Appeal stands allowed in the above terms.

[NITIN W. SAMBRE, J.]