

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 498 OF 2003

I. C. C. Ltd,
Prop. Krishnakumar S/o Bansilal Dhoot
age 51 years, occ. business
R/o Dhoot Building, Sambhajipark
Samor, Bhutte Patil Building,
PUNE. .. Appellant

Versus

1. Ashok S/o Suryabhan Timkare
age 31 years, occ. nil
R/o. at present Imampur,
Tal. & Dist. Ahmednagar
2. The Manager,
Kinetic Engineering Works Ltd;
A & Post Bhima Goregaon
Tal. Shirur, Dist. Pune .. Respondents

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Shri L. B. Pallod, Advocate for the Appellant.
Shri B. N. Palve, Advocate for the Respondent No. 1 –absent.
The Respondent No. 2 is served.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 07TH JUNE, 2023.**

JUDGMENT :

1. The appellant/original respondent No. 1 impugns judgment and order dated 23.05.2002 passed by the Ist Labour Court, Ahmednagar in Application (W.C.A.) No. 79 of 1995 in this appeal filed under Section 30 of the Workmen's Compensation Act.

2. The respondent No. 1/original applicant had approached

the Labour Court at Ahmednagar seeking the compensation towards injury and consequential loss of earning suffered by him on account of accident dated 08.01.1993. The contention of the applicant is that he was employed with the appellant/original respondent No. 1 as a carpenter. The respondent No. 1 had a building construction contract with the respondent No. 2. While the applicant was discharging his duties, he met with an accident and sustained the injuries to his waste, shoulder and hip. The bladder was ruptured. He was admitted as an indoor patient with Sancheti Hospital till 24th February, 1993. Even after discharge he has suffered permanent disability and loss of earning capacity. The claim was contested by the respondent No. 2 on the ground that the applicant was engaged by sub-contractor and he was not in direct employment of the appellant. It is further stated that the appellant has borne medical expenses for applicant on humanitarian ground. It is denied that the claimant has suffered loss of earning capacity. The respondent No. 2 filed written statement and denied the existence of employer-employee relationship. According to him work was given to the appellant/original respondent No. 1 and who has responsibility towards employees during the course of execution of the work.

3. The Labour Court framed the issues and recorded the evidence. The applicant recorded his own evidence and also relied upon evidence of Dr. Patil to prove the nature of injuries i. e. permanent disablement suffered by him. The respondent No. 1 recorded his evidence at Exhibit 16. No evidence is recorded on behalf of the respondent No. 2.

4. The Labour Court after hearing parties allowed the claim petition and directed respondents to jointly and severally pay compensation of Rs. 1,06,785/- along with interest at the rate of 6% per annum from the date of accident. The respondents were also directed to pay the cost of Rs. 2,000/- to the claimant. A separate notice has been issued to the respondents as to why the penalty shall not be recovered from them. Appellant felt aggrieved by this order.

5. Heard learned advocates appearing for respective parties. Perused record. Mr. Pallod, learned advocate appearing for the appellant/contractor would submit that the Labour Court committed grave error in recording the finding on the point of the permanent disablement and loss of earning capacity. He would submit that claimant was treated at Sancheti Hospital at Pune. The treating doctor is not examined before the Court to prove the nature of treatment and the loss of earning capacity. He would submit that C.W. No. 2 Dr. Patil has issued a certificate of permanent disablement on the basis of clinical examination. By inviting attention of this Court to the cross examination of Dr. Patil, he would submit that although, evidence on the point of loss of earning capacity is not sufficient, learned Labour Court has considered 100% loss of earning capacity and passed excessive and exorbitant award.

6. Having considered the submissions advanced and on perusal of the pleadings and evidence, it can be gathered that no dispute as regards employment injuries suffered by the respondent No. 1/original applicant is raised in this appeal. What has been assailed before this Court is the assessment of

compensation. It is trite that the appeal filed under Section 30 of the Workmen's Compensation Act can be entertained only on substantial question of law. From submissions advanced on behalf of the appellant, it can be noted that the disputes on factual aspects of the matter are posed for consideration. This Court is not expected to reappreciate the evidence and replace the findings recorded by the Labour Court which are based on appreciation of evidence. Perusal of record particularly evidence of C.W. No. 2 Dr. Vijay Patil depicts that he has personally examined the claimant and also considered the medical treatment papers. Accordingly certified that the applicant suffered 40% permanent disablement, resulting in 100% loss of earning capacity. He deposed that Applicant would be unable to discharge the duties as carpenter while working at storied buildings. Admittedly, the claimant was engaged as a carpenter for construction of multi storied buildings at the time of accident. Considering nature of his duties and the evidence of medical expert, there is no reason to dislodge the contentions of the claimant that he has suffered 100% loss of earning capacity.

7. It is trite that the percentage of permanent disability and loss of earning capacity are two different concepts. The percentage of permanent disability need not be commensurate to loss of earning capacity. Depending on the nature of the job of the employee, he may suffer 100% loss of earning capacity with lesser percentage of permanent disability. The legal position is crystalized by the judgment of the Hon'ble Supreme Court in the matter of **Pratap Narain Singh Deo Vs. Srinivas Sabata and another** reported in **(1976) 1 SCC 289**, wherein, while considering case of the injured carpenter, loss of earning

capacity is adjudged to 100%, though he had suffered partial permanent disability. In that view of the matter, no error can be found in the impugned judgment and order. Hence appeal is devoid of merits and same is dismissed with costs.

8. The amount if any deposited by the appellant be disbursed to the respondent No. 1/claimant along with accrued interest, if any.

[S. G. CHAPALGAONKAR, J.]

bsb/June 23