

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

FIRST APPEAL NO. 1007 OF 2019

Rahul Jaiprakah Kuril,
Age; 25 years, Occ; Nil,
R/o; Modikhana, Badi Sadak Jalna,
Tq. & Dist. Jalna.

**...APPELLANT
(Org. Claimant)**

V E R S U S

The Proprietor, Dev Ashwa Honda,
Address -Opp. Ratnaprabha Motors,
Aurangabad Road Jalna,,
Tq. & Dist. Jalna.

**...RESPONDENT
(Orig. Respondent)**

Advocate for the appellant : Mr. V.M. Jaware
Advocate for the Respondent : Mr. V.R Mundada

CORAM : KISHORE C. SANT, J.

**Date of Reservation : 12.09.2023.
Date of Pronouncement : 07.11.2023**

ORDER

1. Heard finally by the consent of parties.
2. This appeal is by the original claimant to the extent of

not allowing the claim under the Workman's Compensation Act in its entirety. The learned Commissioner under the Workman's Compensation Act – the Judge of the learned Labour Court, Jalna by way of judgment and order dated 03.12.2018 in Employees Compensation Application No. (C) 2 of 2017 held appellant/claimant entitled to receive compensation has awarded Rs. 1,60,351/- towards compensation from the date of accident @ 12% interest accrued thereon. The respondent is the employer/original respondent.

3. The appellant was working with the respondent as mechanic since December, 2013. While working as such, he received an injury on 10.03.2014, while repairing a motorcycle, a screw driver slipped from his hand and caused injury to his left eye. The appellant lost vision of left eye permanently. Though the eye was operated by three different doctors in hospitals, but the vision could not be restored. It is claimed that because of the accident the workman lost 100% earning capacity. His salary was Rs. 4,000/- at the time of accident and his age was 21 years. Thus, the compensation was claimed at Rs. 2,13,801/-.

4. Though notice sent to the respondent for compensation,

the same was not replied, neither compensation was paid. The employer/respondent did not inform about the said accident to the insurance company and the Labour Inspector. A prayer was made therefore, for penalty of Rs.1,06,900/-. Further an amount of Rs. 63,000/- was prayed towards medical expenses. The petitioner claimed an interest on the compensation.

5. It is the case of the respondent/employer that the workman could not prove the loss of income, percentage of disability, his age etc. No disability certificate is produced on record. He denied the treatment in other two hospitals, except in Ganpati Hospital at Jalna, where the workman was initially taken.

6. The learned Commissioner considered the evidence of the appellant i.e. the discharge summary of the hospital, copy of salary certificate, copy of passbook of the account, School Leaving Certificate, PAN Card, copy of Provident Fund and other relevant documents.

7. Respondent examined the Chief Accountant. The receipt showing that the employer has spent on the treatment of the workman. Muster showing that the appellant worked with

respondent till November, 2015 i.e. even after the accident.

8. The learned Tribunal/Commissioner held that the workman did not produce disability certificate to show the percentage of disability. He was directed to appear before the Medical Board. The certificate of Medical Board showing that the workman lost 30% earning capacity. It is thus, accepted that the loss of income is only 30%. It is further considered that till November 2015 the workman continued to work in the said company on the basis of muster role. The Court has mainly considered that the loss was only of 30%. His income was taken as Rs. 4,000/- as there was no dispute. However, while considering his annual income his monthly income is considered 60% i.e. Rs. 2400/- multiplied by 227.1 which in fact should have been taken as Rs.2800/-. The Tribunal has arrived at figure of Rs. 5,34,504/- by deducting 30% from the amount is taken Rs. 1,60,351/-.

9. It is further considered that the workman has suppressed the fact of the medical expenses which were paid by the employer. Thus, it is held that the appellant is not approached the Court with clean hands. On the point of interest the Court considered that in spite of legal notice the employer did not pay

amount of compensation immediately and therefore awarded interest @ 12% p.a.

10. The learned Advocate for the appellant has argued that the loss of income ought to have been taken as 100% as the deceased has suffered injury to his eye. He has lost vision of his left eye completely. The learned Commissioner has not awarded statutory penalty as compensation was not paid immediately. The Commissioner ought to have granted medical expenses. The claim ought to have been allowed entirely.

11. The learned Advocate Mundada for Respondent submitted that the percentage of the disability is rightly taken as per the medical certificate. He submits that the fact that the workman was still working with the employer shows that he was able to do the same work and thus, there is no loss of income as such. In any case, the disability is not more than 30%. The Court has to consider the provisions of law in strict sense and it cannot go beyond the same. He submits that only case that can be considered is about the penalty. However, the same being discretion with the Commissioner. In this case the Commissioner has rightly used the said discretion as the claimant has suppressed

material fact that the medical expenses were made by the employer. The workman still claiming the medical expenses and submits that no good ground is involved to enhance the compensation.

12. The learned Advocate for the appellant relied upon following judgments :

- a) **AIR Online 2022 Bom. 60 (Bom.)** – Reliance General Insurance Co. Ltd. Vs. Keshar Gopal Singh Thakur and Ors.
- b) **AIR Online 2023 SC 549 (SC)** – Indra Bai v. Oriental Insurance Company Ltd. and Anr.
- c) **AIR 1976 SC 222 (SC)** : Pratap Narin Singh Deo Vs. Shrinivas Sabata and another.

13. In the case of **Reliance General Insurance** (supra) the workman has suffered injury to right eye. He was working as driver. It was held that he completely became incapacitated from working as driver. The said finding of the Commissioner was not disturbed by this Court. By relying on entry No. 4 of Schedule-I, Part-1, Section 2 (1) (g) and entire expenses was awarded. Said Clause-B says that when there is lost sight to such an extent that the claimant is unable to perform work. In that case the percentage of loss has gone up to 100%. Whereas entry No. 25 of schedule-I, Part-II, Clause(1) of Section 2 (1) of the Act 1923, wherein loss of

one eye without complication either in percentage of loss or earning capacity is stated to be 40%.

14. In the case of **Indra Bai** (supra) the Court had considered the permanent total disability resulting from the injury is given in the Schedule is amounted to 60% of monthly wages and multiple and relevant factors. It is held that the financial disability of the workman needs to be considered. Functional disability suffered was of permanent nature.

15. In the Judgment of **Pratap Narain Singh Deo** (supra) it is held that unless right of compensation is taken under Section 3 (5) of the Act, the employer has to be held liable to pay compensation as soon as injury is caused to the workman.

16. The present case would fall under entry No. 25 of the Schedule-I, Part-II. The percentage of earning capacity ought to have been taken as 40%, as the same is permitted by the Statute. In this case, the Court has taken disability to the extent of 30%, based on the certificate. Thus, this Court holds the loss of income earning capacity to be 40%. As per the Judgment of **Indra Bai** (supra) there is no doubt that functional disability needs to show.

In the present case it is seen that the appellant was working with the same employer, as such, the case of **Indra Bai** (supra) is not applicable to the case in hand.

17. As regards the case of **Pratap Narian Singh** (supra) is concerned, there is no doubt that immediately after the accident the employer become liable to pay compensation. The facts of the case are not matching to this case. In that case his arm was totally lost and he become totally incapacitated from doing his work.

18. The respondent has relied upon the following judgments :

a) 2001 (10) SCC 760 – Amar Nath Singh v. Continental Construction Ltd.,

b) (1993) AIR (SC) 361 – A.A.Haja Muniuddin v. Indian Railways

c) 2016 (AIR) SC 5382- Golla Rajanna Etc. Etc. v. The Divisional Manager and Another Etc.Etc.

19. In the case of **Amar Nath** (supra) the learned Commissioner had granted 100% compensation. The High Court reduced the compensation to 30%, considering the provisions under the Act, 1926 and part -II of the Schedule -I of the Act. The Supreme Court upheld the judgment of the High Court.

20. In the case of **A.A.Haja Muniuddin** (supra) also the Hon'ble Apex Court considered entry No. 26, part-II of Schedule-I. The Hon'ble Apex Court held that while assessing compensation entry given under the Schedule would be material.

21. In the case of **Reliance General Insurance** (supra) also the Hon'ble Apex Court held that the Commissioner had awarded compensation after going through the facts of the case and report of the qualified doctor and accepted the same as correct. Thus, considering the submissions in the above judgment, this Court does not find any illegality and perversity in the order except that the learned Commissioner has taken disability only to the extent of 30% instead of 40%. The Court ought to have considered the entry No. 25 of Schedule-I of Part-II which reads as under :

Sr. No.	Description of Injury	Percentage of loss of earning capacity.
25	Loss of one eye, without complications, the other being normal.	40%

22. The Court has rightly considered the appellant as workman has suppressed the fact that it was a part of medical expenses and rightly held that no penalty needs to be awarded.

23. Now coming to the calculations. The learned Commissioner ought to have deducted only 40% of the amount from the amount of Rs. 5,34,504/-, which comes to Rs. 2,13,801/-. So the appellant would be entitled to receive Rs. 2,13,801/-. The appeal is thus partly allowed to that extent. The respondents shall pay an amount of Rs. 2,13,801/- to the appellant with interest @ 12% p.a. from the date of accident till the actual payment. If the payment is already made then the amount of difference shall be paid within a period of two months from today with above interest. If amount is not paid within a period of two months from today the said amount shall be calculated 20% with interest. With this, this appeal is partly allowed in above terms.

(KISHORE C. SANT)
JUDGE

mahajansb/