

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

**902 CIVIL APPLICATION NO.15573 OF 2022
IN FA/2357/2018**

**SALIM MUSTAFA AUTI
VERSUS
SUNIL NAGNATH MUNJULKAR AND ANOTHER**

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Mrs. Anjali Dube (Bajpai), Advocate for the applicant.
Mr. A.B. Gatne, Advocate for respondent No.2.

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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 3rd January 2023.**

ORDER:-

1. Heard rival submissions. The applicant - original claimant, who has filed the present appeal for enhancement of compensation amount, is seeking permission to produce additional evidence in the present appeal.

2. The learned Counsel for the applicant submits that the applicant wants to produce medical evidence on record in respect of his disability in form of disability certificate issued by one Dr. Milind Joshi from Solapur. She submits that at the time of adducing evidence in the claim petition, the applicant had, in fact, produced the disability certificate issued to him from the local doctor at Omerga mentioning 39% disability. However, the said local doctor had not treated him after the accident, but he was treated by the doctor at Solapur namely

Shri Milind Joshi. The learned Counsel for the applicant submits that the Tribunal found, that since the disability certificate of the applicant was not issued by the doctor who attended him after the accident, it was not believed and meager amount of compensation was granted ignoring the aspect of future loss of income.

3. On the contrary, learned Counsel for the respondent Insurance Company strongly opposed the application on the ground that at the time of adducing evidence in the claim petition itself, the applicant was not at all prohibited from summoning Dr. Milind Joshi at Solapur. Further, it is also not the case that the learned Tribunal refused the applicant from producing further medical evidence. As such, he submits that the applicant wants to fill up the lacuna at this juncture which is not permissible under the concept of production of additional evidence at the appellate stage.

4. Admittedly, under Order 41 Rule 27 of the Code of Civil Procedure the party can adduce additional evidence at appellate stage, however, there are certain criteria to permit such additional evidence at the appellant stage. For quick reference, the Order 41 Rule 27 is reproduced as follows :

Order 41 Rule 27 :-

Production of additional evidence in Appellate Court. - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

5. On going through the aforesaid Order, such it appears that the additional evidence can be produced if the trial Court has refused to adduce the evidence or the party

seeking to produce such additional evidence proves that despite exercise of due diligence such evidence was not produced on record or it was not within his knowledge. Further, the appellate Court, for proper adjudication, can also ask for production of such additional evidence.

6. In the instant matter, it is not the case that no medical evidence was allowed to be adduced. In fact, the applicant had produced the disability certificate at Exh.36 issued by the local doctor, who admittedly not treated him after the accident. However, it appears that the applicant wants to file the disability certificate issued by the doctor who treated him only because of certain admissions given by the local doctor before the learned Tribunal. It is extremely important to note that the applicant was not at all prohibited from calling the doctor from Solapur who treated him. As such, it is not the case that despite due diligence the applicant failed to adduce further medical evidence of the doctor who treated him. Even otherwise also, the disability certificate at Exh.36 is on record alongwith the evidence of the doctor who issued it. Therefore, the claim petition can be decided on the basis of available evidence on record. Allowing the applicant to produce subsequent disability certificate, which has been

obtained in the year 2022, will amount to filling up lacuna. As such, considering all these aspects the application stands rejected and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)