

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1178 OF 2019**

	The National Insurance Company Limited RO-II, Sterling Building, 5 th Floor Murzbaan Street, Fort, Mumbai-400001.		Appellant
	<i>Versus</i>		
1.	Govind Ramdas Kulkarni Age-30 years, Occ : Nil R/o. Dhambhewadi, Taluka-Khatav District-Satara.		
2.	Balkrishna Tilakraj Bhatiya Age-30 years, Occ : Business, R/o. At Post Punjab Colony, Lonand Taluka Khandala, District-Satara.		
3.	Uttam Sarjerao Kakade Age-23 Years, Occ: Driver, R/o. Awarki Galli, Indranagar, Lonand, Taluka-Khandala, District-Satara		Respondents

Ms.Poonam Mital, Advocate for the Appellant.

Mr.Vaibhav R. Gaikwad i/b.Mr. Atharva R. Bhingardev for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th APRIL, 2024.

Oral Judgment :

1. The issue involved in this appeal is doctor has not been examined to prove the disability.

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2. It is contention of learned counsel for the appellant-Insurance Company that two disability certificates were produced on record by the claimant to prove his disability. Both disability certificates shows that the claimant had suffered 55% permanent physical disability but to prove the disability, the doctor has not been examined. Unless the doctor is examined, the disability cannot be proved but the Tribunal has not considered this fact and has awarded compensation, which is erroneous. Learned counsel further submitted that the claimant has suffered 55% disability but the Tribunal has considered 100% functional disability, which is erroneous, hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1/claimant that the claimant was working in Vipra Engineering Company and was earning Rs.12,000/- per month. Due to the disability, the claimant has lost his job, so there is 100% functional disability. Learned counsel further submitted that the disability certificate is issued by the Medical Board of Government Hospital, it cannot be disputed. The Tribunal has considered all the aspects while passing the judgment and order, no interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Vaduj (for short "the Tribunal").

5. To prove the disability, the claimant has examined himself. He has stated that due to accidental injuries, he has suffered fracture to his right hand and right leg. Initially, he was admitted in Dr. Kachare's Hospital at Lonad and thereafter, he was shifted to Sancheti Hospital at Pune. He was operated twice for his fracture. On the first occasion, a rod was inserted in fractured hand and leg and on the second occasion, it was removed. The claimant has further stated that he was admitted in the hospital for couple of days. Doctor at Sancheti Hospital has issued disability certificate of 55%, it is at Exhibit-34. The claimant appeared before the Medical Board, Civil Hospital, Satara and the Medical Board issued disability certificate of 55%, it is at Exhibit-31. Due to the disability, the claimant has lost his job, so it is 100% functional disability. While dealing with the issue of disability, the Tribunal has observed that the disability certificate is issued by the Medical Board, Civil Hospital, hence, it cannot be disputed and the claimant has lost his job. Hence, the Tribunal considered 100% physical disability. I do not find infirmity in it. In my view, though the claimant has not examined the doctor to prove the disability, the disability certificate is issued by Medical Board of Civil Hospital at Satara. As per the view of Hon'ble Apex Court in the case of **Raj Kumar vs Ajay Kumar & Anr, AIR ONLINE 2010 SC 125**, the disability certificate issued by the Government Hospital can be considered as an evidence, hence, I do not find merit in the contention

that the disability certificate cannot be considered as the Doctor was not examined.

6. In view of above, I pass following order :

O R D E R

1. The appeal is dismissed. No order as to cost.
 2. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)