



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 417 OF 2019

Shri Chotelal S/o. Babulal Upgrade,
Aged about 52 years, Occu.- Nil,
R/o. Plot No. 278, Near Ram Mandir,
Chandan Nagar, Nagpur.

.... **APPELLANT**

// **VERSUS** //

- 1) Shri. Dilip Doulatrao Pawar,
Aged about 60 years,
Proprietor : M/s. Doulat Timbar Mart,
Plot No. 34, Lakadganj, Nagpur.

Deleted as per
Court's order
dt.05.04.2019.

- 2) ~~Hon'ble Fourth Judge of
Labour Court, Nagpur,
Civil Lines, Tah. and Dist. Nagpur.~~

.... **RESPONDENTS**

Mrs. Shilpa Giratkar, Advocate for Appellant.
Mr. S. P. Kshirsagar, Advocate for Respondent No.1.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : **10.06.2024.**

DATE OF PRONOUNCING THE JUDGMENT : **30.07.2024.**

JUDGMENT.

1. **Admit.** Heard finally with consent of the learned
Advocates for the parties.

2. This appeal is preferred against the Judgment and order dated 17.07.2018 passed by Commissioner, under Employee's Compensation Act, 1923 Fourth Labour Court, Nagpur in ECA. Case No. 40 of 2014.

3. Brief facts of the case are as under :

(i) The respondent is the proprietor of the timber mart namely "M/s. Daulat Timber Mart". The applicant was working with him as a 'Cutter' on the wood cutting machine having skill to work on circular saw as a 'Machine Operator' on daily wages basis. He was getting Rs.7,280/- per month as wages. He used to receive yearly bonus at the time of Diwali festival. It is contended that on 18.03.2014 he was working along with co-worker on wood cutting machine having circular saw. At about 11.00 am., his right hand went into that machine while he was holding a piece of wood in his right hand. His two fingers were cut down by the open blade of the circular saw. His thumb also sustained injury. A co-worker Sudhakar Raut immediately stopped that machine and informed the concerned about that accident. The applicant was admitted in the Gupta Nursing Home, situated at the Central Avenue Road, Nagpur. He further contended that due to the injuries sustained to him, he lost his two fingers of the right hand. He was operated. He sustained 60%

permanent disability. On 15.05.2014, the respondent called him and forced him to join duty with him. He joined the duty on 16.05.2014. However, due to his disability, he was unable to perform his job properly. He was able to work for four hours in a day only. Therefore, he got half wages.

(ii) On 29.05.2014, respondent called the applicant and forced him to make signature on blank paper by accepting Rs.50,000/- as a compensation. He refused to make signature on that paper. The Respondent thereafter, terminated the applicant from service. He further contended that without giving prior intimation to the police station regarding that accident, he was compelled to sign the blank paper. Thereafter, he lodged a report of the incident in the concerned police station. The crime was registered against the respondent under Section 287 and 338 of the Indian Penal Code, 1860.

(iii) It is further contended by the applicant that he cannot perform work as he was performing earlier as his two fingers are cut in the accident during his employment with respondent. He is only earning members of his family. All the family members are depending upon him. Due to disability, he is unable to earn for maintaining his

family members. At the time of accident, he was 46 years old. As per his salary of Rs.7,280/- per month, the respondent failed to pay the compensation of Rs.7,26,354/- to him. Therefore, the application was filed for getting compensation.

(iv) The respondent contended that the applicant was working from November 2013 as a “Cutter” in his timber mart. The applicant never worked as a machine operator. He was a casual labourer. He used to receive Rs.280/- per day i.e. Rs.6,720/- per month. He has further contended that there were all safety measures available in his workshop. The applicant himself was negligence and solely responsible for the accident and therefore injuries are sustained to him. Immediately after the incident, the applicant was shifted to the Gupta Hospital for treatment. That time, respondent paid Rs.64,000/- for his treatment. On 16.05.2014, the applicant himself resumed his duty. He continued his work for about three weeks.

(v) The respondent further contended that considering contributory negligence of the applicant and his 9% total permanent disability, he is not entitled for compensation. He had not sustained 60% permanent disability. The respondent deposited Rs.50,000/- in

the Office of Commissioner i.e. Labour Court. The applicant is not entitled for compensation and the respondent is not liable to pay interest and penalty to him. The respondent has denied rest of the contention of the application and prayed for rejection of the application.

(vi) The learned Commissioner/the Labour Court cast following issues :

- (1) *Does applicant prove that on 18.03.2014 he met with an accident and sustained injury arising out of and during the course of his employment?*
- (2) *Does applicant prove that he is entitled for the amount of compensation, interest and penalty as claimed? If yes, to what extent?*

4. The trial Court held that the applicant has proved that he has sustained 18% permanent disability. The application was partly allowed. The compensation amount of Rs.68,349/- was awarded to the applicant.

5. The following substantial questions of law is formed by this Court :

Whether the compensation awarded while dealing with claim under Section 22 of the Employee's Compensation Act, 1923 is in accordance with the scheme of statute?

6. Learned Advocate for the appellant submitted that evidence was not properly appreciated by the learned trial Court. The compensation amount was not properly carved out and permanent disability was not properly calculated while granting the amount of compensation.

7. The learned Advocate for the appellant further submitted that the calculation of the learned trial Court is not legal and correct. It has not considered entire evidence in its proper perspective. It has only considered that there was only 18% loss of his earning capacity. The provisions of law are not properly considered. It is lastly prayed that considering 60% disability, the appeal be allowed by awarding compensation accordingly.

8. The learned Advocate for the appellant is relying upon the following precedential laws :

(i) ***Pratap Narain Singh Deo Vs. Srinivas Sabata & Anr.***, reported in ***(1976) 1 SCC 289***, in which it is held that when the

injuries by its nature are of permanent disablement and it incapacitated the workman from performing all work, which he was capable of performing earlier, it can be consider as total disablement.

(ii) ***Royal Sundaram Alliance Insurance Company Ltd. Vs. Manoj Laxman Patil & Anr.***, reported in ***2017 (2) Bom.C.R. 724***, in which it is held that as per Section 2(1)(I) of the Workmens Compensation Act, 1923, total disablement means whether of a permanent or temporary nature, as incapacitates a workman in all work which he was capable of performing at the time of accident resulting in such disablement.

(iii) ***Joginder Sain & Brothers Vs. Man Mohan Singh & Ors.***, reported in ***2004 I CLR 855***, in which it is held that when schedule mentions specific injury, loss of earning capacity, no other certificate required.

(iv) ***Arjun S/o Ramanna Alias Ramu Vs. IFFCO TOKIO General Insurance Company Ltd., & Anr.***, reported in ***(2022) 5 SCC 706***, wherein it is held that functional disability is decisive factor to decide loosing the capacity to work as he was working earlier.

9. The learned Advocate for the respondent submitted that judgment and order passed by the learned trial Court is legal and correct and only two fingers of the applicant were cut, he had made capital of it. The application is rightly decided on merit by the learned trial Court.

10. The learned Advocate for respondent relied upon the following precedential laws :

(i) ***B. T. Shipping London Ltd. & Anr. Vs. Smt. Arati Narayanan & Ors.***, reported in ***2000(2) Mh.L.J. 832***, in which it is held that the Commissioner cannot order the employer to deposit the amount which exceeds the amount prescribed under the Act. The scale of compensation set out in Schedule IV under Section 4 and not beyond it.

(ii) ***Shriram General Insurance Co.Ltd. Raigad Vs. Bande Nawaj Kasim Shaikh & Anr.***, reported in ***2017 (2) Mh.L.J. 73***, in which it is held that Doctor assessed permanent disability at 61% which was on higher side, the amount of permanent disability was reduced considering Schedule of loss of earning capacity is given as 20% for loss of all toes of both feet.

(iii) ***Shivaji Hanmantrao Mane Vs. Government of Maharashtra & Ors.***, reported in ***2009 (3) Mh.L.J. 584***, in it is held that when there is nothing on record to show that the appellant incurred any expenses other than two medical bills, therefore, considering the Section 4(D), the appellant is entitled for compensation at the rate of Rs.7.50 per day for which period he was treated.

(iv) ***Binddadin Ramasray Varma (Pasi) Vs. Ramsajivansingh B. Singh & Anr.***, reported in ***2014(6) Mh.L.J. 309***, in which it is held that if the Doctor is not examined for proving disability, the disability certificate cannot be safely relied upon.

11. Nobody will dispute *ratio* laid down in the above authorities cited on behalf of both sides. It is well settled that facts of the case are always decisive.

12. Perused the record and proceedings of the case and the impugned judgment.

13. To prove his case, the applicant has filed affidavit of examination-in-chief at Exhibit U-6. The respondent also filed his

affidavit of examination-in-chief at Exhibit 33. The Doctor i.e. expert, who drawn up and issued the disability certificate to the applicant is not examined, even treating Doctor is also not examined by the applicant.

14. In the case in hand, the Doctor is not examined by the employee. Conduct of the appellant shows that he joined the duties after the recovery of his injuries. He then made an allegations that he is removed from the job and also prayed for reinstatement. The report of incident shows that two fingers of the applicant/appellant were cut. From his cross-examination also it reveals that he sustained injuries to his two fingers only.

15. If the First Information Report is minutely perused, it shows that only two fingers of the applicant were cut, but his thumb as alleged is not cut. The happening of accident is not disputed. There is no evidence of cut of the thumb of the applicant or any serious injury sustained to it, due to which, he is unable to work as he was working prior to the said accident. Thus, there is no any mistake on the part of the learned trial Court while concluding percentage of disability and calculation of loss of earning capacity. Considering the age of the applicant, learned trial Court rightly held

that as per Section 4(1)(b) of the EC Act, the total disablement resulting from the said accident with an amount of equal to the 60% of monthly wages of employees i.e. applicant of Rs.6720/- are multiplied with the relevant factor. Thus, in the present case, 60% of the wages of the applicant comes to Rs.4,032/-. Considering the age at the time of incident, relevant factor was properly applied by the trial Court. All these legal and factual aspects were properly considered by the learned trial Court while calculation of amount of compensation.

16. Considering the matter before the trial Court and the arguments of both sides, particularly written argument of respondent, this Court did not find any scope for interference in the impugned judgment. Considering all these aspects, there is no substance in the grounds of appeal. Though some documents as per order dated 18.02.2019 were permitted to be filed on record, said documents are of no use for the appellant to draw the different inferences which were drawn by the learned trial Court. Therefore, the substantial question of law is answered in the affirmative that compensation is awarded as per the Scheme of the said Act. The reasons and findings of the trial Court are legal and correct and no interference is warranted. The argument of learned Advocate for the appellant is

therefore not acceptable. The appeal being devoid of merit deserves to be dismissed. The Appeal is **dismissed**. No order as to costs.

(SANJAY A. DESHMUKH, J.)

Kirtak