

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1103 OF 2024.

Balagauda Appasaheb Pimpale

...Appellant.

Versus

Devendrasingh Khurana and Another.

...Respondents.

Mr. T. J. Mendon for Appellant.

Coram : Sharmila U. Deshmukh, J.

Date : January 6, 2025.

P. C. :

1. The present Appeal has been filed under Section 30 of the Employee's Compensation Act, 1923 challenging the judgment dated 9th February, 2024 passed by the Commissioner for Employee's Compensation.
2. By the said judgment, the Commissioner assessed the loss of earning capacity of Appellant at 50% and accordingly, granted compensation. The grievance, in the present case, is that Disability Certificate which was issued by doctor assessed the disability of 88%, whereas the Commissioner has granted compensation by considering 50% loss of earning capacity.
3. Mr. Mendon, learned counsel appearing for Appellant would submit that in the present case, the Appellant had claimed 100% loss

of earning capacity, whereas the Commissioner had granted 50% loss of earning capacity. He submits that the substantial question of law which arises is that Disability Certificate issued by doctor assessed the disability to be 88% and therefore, there was loss of earning capacity of 100% and not 50%.

4. I have considered the submissions and perused the records.

5. Under Section 30 of the Employee's Compensation Act, 1923, an Appeal lies to the High Court against an order partially allowing the claim, however, the proviso to Section 30(1) provides that no appeal shall lie against any order unless a substantial question of law is involved in the appeal. In the present case, doctor who assessed the disability of 88% was examined. The judgment notes that doctor has failed to explain how he has concluded the disability and has also failed to give bifurcation of injuries sustained by appellant.

6. Perusal of the cross-examination of doctor would indicate that doctor has accepted that he was not treating doctor of Appellant and before and after issuing the disability certificate, he had never seen the Appellant. He had further admitted that at the time of issuing the Disability Certificate, he had not seen the original treatment papers of the appellant and had not taken any fresh x-rays of the appellant. The accident had happened on 11th December, 2021 and he had examined Appellant on 24th December 2022, almost after a period of one year. He

has further, admitted that he has done screening of the patient, but not produced any screening record and he has admitted that assessed disability is limited to the affected part and not for the whole body. Considering the vital evidence given in the cross-examination, the Commissioner has considered the loss of 50% earning capacity and accordingly, granted compensation. The question of law which is sought to be framed in the Appeal Memo is the question of fact, as to whether, the physical disability certificate assessing the disability at 88% stood duly proved. As evidence on record would demonstrate that Appellant has failed to prove the Physical Disability Certificate of 88%, the Commissioner has rightly considered the evidence and considered 50% loss of earning capacity.

7. In light of the above, there is no substantial question of law which is involved in the present case. Appeal stands dismissed.

[Sharmila U. Deshmukh, J.]