

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1701 OF 2025

Subhash Ramyadi Chouhan

...Appellant

Versus

Capt. Aniket Pradhan, Sr. F.P. Superintendent,
M/s. MSC Crewing Service Private Limited and
Others

...Respondents

Mr. Ashwinikumar Pathak, for the Appellant.

*Mr. Prathamesh Kamat a/w. Mr. Kayush Zaiwala, Mr. Abhijeet Desai and
Mr. Vaibhav Shinde i/b. Mr. Adil Patel, for Respondent No. 1.*

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 22, 2026

ORAL ORDER

1. The First Appeal has been preferred by the original Applicant being aggrieved by the judgment dated 24th August, 2017 passed by the Commissioner for Employees Compensation partly allowing the application and granting compensation of Rs. 1,32,602/- with 12% interest p.a. thereon.

2. During the hearing of the Appeal, learned counsel for the Respondents submitted that the Applicant and the Respondents had entered into full and final settlement and consent terms were executed. He tenders the copy of the settlement agreement and would

submit that the Appellant has been paid a sum of Rs. 21,51,000/- as full and final settlement, though the Trial Court had awarded only a sum of Rs. 1,32,602/-. He submits that after executing the full and final settlement and encashing the Demand Draft, the Appellant is now agitating the present Appeal.

3. The facts of the case are that the application came to be filed by the Applicant who was a Fitter on Vessel MSC Malin claiming that the accident had taken place during the course of employment in which the Applicant sustained injuries on 18th December, 2012 and lost vision of left eye. The Applicant claimed that he is entitled to receive lumpsum payment of Rs. 94 Lakhs as per the relevant multiplier factor calculation.

4. The claim came to be resisted by the Respondents contending that on 18th December, 2012 the Applicant was working on forward port and inspite of Applicant wearing protective goggles, a foreign particle entered his left eye for which immediately medical treatment was given and he was admitted in the hospital at Antwerp for further treatment. Upon arrival at Mumbai, the Applicant was examined by company Doctor and further treatment was given which concluded that the Applicant has correct vision. On the basis of the report, the Respondents offered the Applicant, in the interim, job of a Wiper, though the Applicant was fit but being inactive for intervening period

which was denied by the Applicant and he demanded the job of Motorman. It was stated that there was no question of payment of compensation as the Applicant is not permanently disabled and he is fit to join the duties.

5. The parties went to Trial Court and the Trial Court framed necessary issues as regards the existence of the employer employee relationship, the occurrence of the accident, the monthly salary of the Applicant and the loss of earning capacity.

6. In so far as the issue of loss of 100% earning capacity is concerned, the Trial Court noted that though the Applicant has placed on record the disability certificate, the Doctor who issued the disability certificate was not examined and on the other hand the Respondents has examined the Panel Doctor who had duly examined the Applicant, after the accident had taken place and had declared him fit to work. The Trial Court further noted that in the cross examination of the Respondent's witness, the Applicant failed to put a single suggestion regarding 100% disability of the Applicant after the accident. In the absence of any evidence being placed on record to prove 100% disability by the Applicant, the Trial Court considered the nature of injury, assessed the injury at 15% on observing the Applicant when he appeared before the Court and granted compensation of Rs. 1,32,602/-.

7. Learned counsel for the Appellant has taken this Court through the judgment of the Trial Court and would submit that the Trial Court though accepted that the Applicant was getting salary of USD 1283 at the time of accident has not accepted the case of the Applicant as loss of earning capacity at 100% and has assessed the same at 15%. He would further submit that the disability of the Applicant was assessed by the Doctor at 30% and considering the nature of injury, there was a loss of 100% earning capacity and therefore the application ought to have been allowed by computing the loss of earning capacity at 100%.

8. *Per contra*, learned counsel appearing for the Respondents would contend that the Trial Court has assessed the compensation after considering the evidence on record and there is no perversity demonstrated which would warrant interference by this Court.

9. I have considered the submissions and perused the record.

10. For the purpose of entertaining the Appeal, Section 30 of the Employees Compensation Act requires that the Appeal must raise substantial question of law. In the present case, the Trial Court has framed necessary issues and in so far as the issue of loss of 100% earning capacity is concerned, the burden was upon the Applicant, to prove that he has suffered 100% loss of earning capacity. Perusal of the findings of the Trial Court would indicate though the Applicant had placed on record the disability certificate, he has not examined the

Doctor who had issued disability certificate. It is not sufficient to merely place the disability certificate on record without proving the contents thereof by examining the Doctor. On the other hand, the Respondents has examined the panel Doctor who had declared the Applicant fit for work.

11. The Trial Court has appreciated the cross examination of the Respondents' panel Doctor to hold that the Applicant has not even put a suggestion as regards the 100% disability or 100% loss of earning capacity due to injury caused to left eye. Learned counsel for the Appellant has not been able to demonstrate any material to dispute the factual finding arrived at by the Trial Court. Further even accepting that the certificate was placed on record by the Applicant, the disability was assessed at 30%. It was necessary for the Applicant to prove that the loss of earning capacity is 100% which is not demonstrated from the evidence which has come on record. The Trial Court has assessed the loss of earning capacity at 15% which in the opinion of this Court, ought not have to be done, particularly considering that there was no evidence on record produced by the Applicant to prove the loss of earning capacity even to the extent at 15%. From the material which is produced on record, I do not find any reasoning to support the findings of the Trial Court assessing the disability at 15%. Be that as it may. The said finding has not been

challenged by the Respondents.

12. The Applicant has failed to prove 100% disability and 100% loss of earning capacity. There is no perversity demonstrated. No substantial question of law arises in the present case.

13. The First Appeal stands dismissed.

[SHARMILA U. DESHMUKH, J.]