

(2011) 02 BOM CK 0147
Bombay High Court (Nagpur Bench)
Case No: First Appeal No. 60 of 2010

Narayan Bansilal Vaishnav

APPELLANT

Vs

Champatrao Tryambakrao
Deshmukh, (dead through L. Rs.
, Smt. Shakuntalabai Deshmukh,
Dr. Pravin Deshmukh and
Pradeep Deshmukh

RESPONDENT

Date of Decision: Feb. 23, 2011

Citation: (2011) 3 ALLMR 198 : (2011) LLR 524

Hon'ble Judges: R.M. Savant, J

Bench: Single Bench

Advocate: S.N. Gaikwad, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

R.M. Savant, J.

Heard Shri S.N. Gaikwad, the learned Counsel for the Appellant. None appears for the Respondents though served.

2. The above First Appeal takes exception to the judgment and order dated 14.11.2009 passed by the Commissioner, Workmen's Compensation, Buldhana in W.C.A. No. 17/2004. By the said judgment and order, the application filed by the Appellant was dismissed. The facts involved in the Appeal can be stated thus.

The Appellant is the original applicant in W.C. Application No. 17 of 2004. It was the case of the Appellant/applicant that he was serving as a driver on Tempo Trax Jeep bearing No. MP09S1778. The said jeep belonged to the Respondent to the said application, namely Shri Champatrao Tryambakrao Deshmukh. It was the case of the Appellant/ applicant that he was drawing Rs. 1200/per month as salary and Rs. 30/per day as bhatta. The said Jeep met with an accident on 04.02.1999. In the said accident the Appellant/applicant sustained injury to his right hand below wrist for

which he was immediately admitted in the hospital of Dr. Borale at Malkapur. He was indoor patient for three days there, and thereafter the said Doctor advised him to take further treatment in the Government Hospital at Aurangabad. Thereafter he was admitted in Ghate Hospital at Aurangabad on 10.02.1999 and was operated there. In the said operation his right arm was amputated and he was discharged on 14.03.1999. It is the case of the applicant that he has spent more than Rs. 15,000/towards hospital expenses. It is further his case that since his right hand has been amputated, he has suffered permanent disability and on account of which he is now unable to do any work, as he is not in a position to drive the vehicle. It is further his case that he is the only earning member of his family which consists of 5 other members. The Appellant/applicant therefore filed an application invoking the provisions of Workmen's Compensation Act and claimed Rs. 2 lakhs as and by way of compensation.

3. The Respondent - employer appeared in the said proceedings. He admitted that the jeep, which the Appellant/applicant was driving, was owned by him. However, it was his case that the Appellant/applicant had taken the said jeep for his personal use, he denied that the Appellant /applicant was earning Rs. 1200/per month or that he used to pay him Rs. 30/per day towards Bhatta. He has also denied that on the fatal day i.e. on 04.02.1999 he had asked the Appellant/applicant to carry the persons from Indira Apang Vidhyalaya at Khamgaon. The Respondent prayed for dismissal of the application.

4. The learned Commissioner framed relevant issues and recorded a finding in favour of the applicant that he has proved that he was working with the Respondent as driver, the learned Commissioner also held that the Appellant had proved that he was earning Rs. 1200/per month, however, the learned Commissioner held that the Appellant had failed to prove his loss of earning capacity. Hence by the impugned judgment and order, the application filed by the Appellant came to be dismissed.

5. On perusal of the impugned judgment and order of the W.C. Application No. 17/2004 it is revealed that the Appellant has not been granted compensation merely on the ground that he had failed to prove the loss of his earning capacity. It is pertinent to note that the fact that the right hand of the Appellant was amputated from the elbow downwards, was before the learned Commissioner, as also the fact that the Appellant was earning Rs. 1200/per month which the learned Commissioner has held to be proved. In the said circumstances, the finding of the learned Commissioner that the Appellant has failed to prove the loss of earning capacity does not stand to reason. It does not require any debate that a person whose profession is that of a driver, after losing one arm and that too the right arm, obviously would not be in a position to drive any vehicle and the same would, therefore, result in loss of his earning capacity. The said aspect has been totally overlooked by the learned Commissioner while dismissing the application filed by the Appellant. The Appellant/applicant has also annexed his photograph to the

present appeal, in which photograph it can be clearly seen that his right arm has been amputated.

6. In my view, therefore, the impugned judgment and order of the learned Commissioner is required to be set aside and the matter is required to be remanded back to the learned Commissioner for a denovo consideration. On such remand, the learned Commissioner would be required to take into consideration the fact that the Appellant has lost one arm from the elbow downwards, as also to take into consideration that the Appellant was earning Rs. 1200/per month prior to the said accident. It is on the touchstone of the aforesaid facts that the application filed by the applicant under the 6 Workmen's Compensation Act would have to be adjudicated upon. The impugned judgment and order is, therefore, quashed and set aside and the matter is remanded back to the learned Commissioner, Workmen's Compensation, Buldhana for denovo consideration in terms of the directions as contained herein above. Needless to state that the Commissioner, Workmen's Compensation would decide the said application on its own merits and uninfluenced by the observations made hereinabove.

7. In view of the fact that the accident is of the year 1999, the learned Commissioner to decide the application filed by the applicant/Appellant within a period of four months from the receipt of writ of this Court.

8. The First Appeal is accordingly allowed to the aforesaid extent. No costs.