

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1121 of 2004
with
CIVIL APPLICATION No. 4195 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

HON'BLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to
see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

Whether this case involves a substantial question
4 of law as to the interpretation of the constitution
of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO LTD. - Appellant(s)

Versus

MANHARLAL DHANJIBHAI VASAVA & 2 - Respondent(s)

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Appearance :

MR KV GADHIA for Appellant No(s).: 1.

MR ZUBIN F BHARDA for Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA and
HON'BLE MR.JUSTICE M.C.PATEL

Date : 30/06/2005

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

The appellant - New India Assurance Company Ltd., has
filed this appeal under Section 30 of the Workmen's

Compensation Act, 1923 and challenged the impugned judgment and award dated 20th September, 2003 passed by the Ex-Officio Commissioner for the Workmen's Compensation Act, Surat in Workmen Compensation (Non-fatal) Application No.20 of 2003 whereby the learned Commissioner allowed the application filed by the respondent workman Manharbhai D. Vasava and ordered the appellant - insurance company as well as the employer to pay Rs.4,06,636/- with Simple Interest at the rate of 12% from the date of accident and cost of Rs.1,000/- jointly and severally.

1.1 It may be stated that the learned Commissioner has also ordered the employer - respondent no.2 to pay penalty of Rs.1,62,654/- to the workman by holding that insurance company was not liable for the same. Therefore, that part of the award is not challenged by the appellant - insurance company in this appeal.

2. Respondent no.1 - original applicant was having valid motor vehicle licence and was working on a tractor of present respondent no.2 - Jivabhai Devjibhai Vasava and drawing monthly salary of Rs.4,000/-. On 6th March, 2003, he met with an accident and because of that, he received

serious injuries on his right leg and his right leg was amputated below the knee. Thus, he became totally disabled from driving any vehicle any more. At the time of accident, he was hardly aged 28. Considering the evidence on record led by the parties, the learned Commissioner came to the conclusion that the applicant had proved the relationship of master and servant between him and original opponent no.1. He has also proved that he received the injury while on job. At the time of the accident, his age was 28 and his monthly salary was Rs.3,200/- and not Rs.4,000/-, as claimed by the workman. He has also come to the conclusion that the applicant had become 100% disabled because of the accident. This judgment and award passed by the learned Commissioner is challenged in this appeal by the appellant - insurance company.

3. Learned counsel Shri Gadhia for the appellant - insurance company firstly submitted that as per Schedule I Part II Item 21, for amputation below knee with stump exceeding 12.70 cms, the loss of earning capacity is fixed at 50% by the Legislature whereas the learned Commissioner has assessed 100% disability. Therefore, the impugned award passed by the learned Commissioner is required to be

reduced by 50%. In the instant case, the respondent no.1 - original applicant - workman was working as Driver. Once his right leg has been amputated, he has become 100% disabled. In that view of the matter, the learned Commissioner has rightly assessed disability at 100%, as there was total disablement.

4. Except the aforesaid contention, no other contention was raised in appeal.

5. Though there was an attempt on the part of Mr. Gadhia to submit that the learned Commissioner has wrongly assessed Rs.3,200/- for respondent no.1, it may be stated that the respondent no.1 claimed that he was earning Rs.4,000/- per month while driving but the learned Commissioner has considered his monthly salary at the rate of Rs.3,200/-, which cannot be said to be unreasonable. Nowadays, any driver get minimum salary of around Rs.3,000/-. Under the circumstances, when on appreciation of evidence, if the learned Commissioner has come to the conclusion that he was earning salary of Rs.3,200/- per month then it cannot be said to be unreasonable.

6. It may be stated that no appeal shall lie against any order passed by the learned Commissioner unless a substantial question of law is involved in the appeal. In the instant case, no question of law, much less substantial question of law is involved in the appeal. In that view of the matter, the appeal is required to be dismissed. Accordingly, the appeal is dismissed. However, there shall be no order as to costs.

7. Civil Application for stay is dismissed as the main appeal is dismissed. Rule discharged. Interim relief stands vacated.

8. The appellant - insurance company has deposited the amount awarded with cost and interest before the learned Commissioner, out of which 50% was ordered to be deposited in a nationalised bank. Now the main appeal of the appellant - insurance company is dismissed. Therefore, it would be proper to disburse the said amount to the respondent no.1 - original applicant no.1 - workman. The learned Commissioner shall pay the said amount by way of Account Payee cheque in favour of respondent no.1 - original applicant - Manharlal Dhanjibhai Vasava at the

earliest.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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