



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1627 OF 2012

Mahendra Sabharu Majhi)
aged about 27 years, Occ: Nil,)
residing at : Gram Teveri, Post Budel,)
Taluka : Budel, Orissa.)Appellant
(Orig. Applicant)

V/s.

1. M/s. Mahlaxmi Enterprises)
402, Mahalaxmi Apartment,)
Cama Lane, Ghatkopar (West))
Mumbai 400 077.)

2. The Bajaj Allianz General Indusrance Co. Ltd.)
At 6th Floor, Sun Magnetica, Service Road,)
Near New R. T. O. Teen Naka, Lois Wadi,)
Tahne (West).)Respondents
(Orig. Opponents)

Ms. Varsha Nichani for the appellant.

Mr. Vijay Sardal for respondent no.1.

CORAM : JITENDRA JAIN, J.

DATED : 25 February 2026

Judgment :

1. This appeal arises out of an order passed by the Commissioner for Workmen's Compensation ('Commissioner') under the Employees' Compensation Act, 1923.

2. On 20 January 2014, the appeal was admitted, but no substantial question of law was framed. Therefore, the substantial question of law is framed now which reads as under :

“Whether the Commissioner for Workmen's Compensation was justified in rejecting the application for compensation on the sole ground that the disability certificate was issued by a doctor who did not attend to the injured applicant ?”

3. On 14 January 2026, an order was passed issuing notice to respondent no.2-insurance company to engage an advocate to defend the appeal. It was mentioned that if after the service of the notice there is no appearance, then the appeal will be decided in their absence.

4. Ms. Nichani, learned advocate for the appellant has produced a letter acknowledged by respondent no.2 whereby an order dated 14 January 2026 was enclosed which is self-explanatory. However, there has been no appearance on behalf of respondent no.2 today.

5. The appeal is of the year 2012 and inspite of notice, respondent no.2 chose not to appear. Therefore, I have no option but to decide this appeal *ex parte*.

6. The original applicant was employed with opponent no. 1 for doing work at a construction site at Thane. While carrying out work at the construction site, the applicant fell and suffered back injuries. The injured was taken to Lok Hospital, Thane for treatment. The injured was in hospital from 22 March 2010 to 29 March 2010.

7. The applicant made an application to the Commissioner claiming compensation of Rs.5,95,584/- from opponent nos.1 and 2 jointly and severally. Evidence of opponent no.1 and the applicant was recorded. The Commissioner, after hearing all the parties, dismissed the application on the sole ground that the disability certificate was issued by a doctor who did not attend to the injured applicant, though the said doctor entered the witness box and gave evidence. On the basis of this reasoning, the Commissioner decided all the issues against the applicant. Therefore, the

present appeal is filed challenging the said order.

8. I have heard Ms.Nichani, learned counsel for the appellant.

9. At the outset, the Commissioner was not justified in answering the issues against the applicant, which do not have any relation with the disability certificate which was issued by the doctor. For example, whether employer-employee relationship has been established or whether the accident occurred in the course of employment etc. are issues which ought to have been decided independently and same does not have any relation whatsoever with respect to the disability certificate for the purpose of calculating compensation. However, since all the issues are decided against the applicant solely on the ground of disability certificate, for the reasons stated hereinafter, the said reasoning is erroneous. Insofar as other issues are concerned, same stands concluded based on my finding on the issue of disability certificate.

10. Section 4(1)(c)(ii) and Explanation-II thereto of the Employees' Compensation Act, 1923 provides for disability certificate to be issued by a "qualified medical practitioner" for ascertaining loss of earning capacity in relation to injuries specified in the Schedule.

11. Section 2(1)(i) of the Employees' Compensation Act, 1923 defines "qualified medical practitioner" to mean any person registered under any Central Act, Provincial Act or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act.

12. I have not been shown any provision in the Act nor any provision has been referred to in the judgment which states that the disability certificate has to be issued only by the doctor who attended the injured. There is no

dispute that the doctor who issued the disability certificate in the present case is a qualified medical practitioner. The object of obtaining a medical disability certificate from a medical expert is to arrive at the percentage of disability by taking the help of an expert in the field. Therefore, in the absence of any specific provision in the Act requiring disability certificate to be issued only by the doctor who has treated the injured reasoning of the Commissioner to reject application is not correct.

13. A qualified medical practitioner who has not treated the injured can always give evidence on the basis of the medical reports of the injured and give a certificate on the loss of earning capacity or disability. Such a doctor is always open for cross examination.

14. In the instant case, merely because the doctor gave a medical certificate who did not attend the injured but entered the witness box after one year cannot be a ground for discarding and rejecting the whole claim. The Commissioner should have considered the evidence of the doctor and could have arrived at independently the percentage of loss of earning capacity. Therefore, in my view, the approach of the Commissioner in rejecting the application was erroneous and the Commissioner ought to have considered the certificate issued by a doctor who did not treat the injured applicant, but was subjected to cross-examination and after considering the same should have arrived at the disability percentage. Therefore, the impugned order is set aside and is remanded back to the Commissioner for the limited purpose of considering the evidence on record and giving a finding on loss of earning capacity. Insofar as other issues are concerned like employer-employee relationship, accident having occurred in the course of employment etc. are concerned, same are precluded from being re-examined since the only ground for rejection even on these issues was the certificate having issued by a non-treating doctor, which as opined

earlier is erroneous.

15. Ms. Nichani, learned counsel for the appellant is justified in relying upon the decision of the Karnataka High Court in the case of ***Mukesh Kumar vs. Kulhari Tours and Travels Prof. Mahipal Singh & Anr.***¹ wherein in paragraph 9, it is specifically observed that there is no provision in the Act mandating assessment of loss of earning capacity only by a doctor who has treated the workman and there is no bar for consideration of deposition of any qualified medical practitioner who examined the claimant and substantiates the disability. In my view, this decision supports the case of the appellant.

16. In view of above, the appeal is allowed by answering the question in favor of the appellant and against the respondents and the impugned order dated 19 June 2012 is set aside and the Commissioner is directed to consider the evidence on record of the doctor who has issued the certificate and arrive at a disability percentage and calculate the compensation. It is made clear that other than this issue, no other issue will be examined by the Commissioner.

17. The appellant to appear before the Commissioner on 23 March 2026 at 11:00 a.m. so that the Commissioner can fix up the date for hearing.

18. The Commissioner is requested to dispose of the application for compensation on or before 30 June 2026.

19. Appeal is allowed in above terms.

(JITENDRA JAIN, J.)

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