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CM.A.No.2961 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI,J.**

C.M.A.No.2961 of 2021

and C.M.P.No.16898 of 2021

1.The Divisional Manager,

The New India Assurance Co. Ltd.,

D.O.T.P.Claims Hub of 30, J.M.Street, 2nd Floor,

Puducherry-1

...Appellant

Vs.

1.Rajiv Gandhi

2.Murugavel

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Employee's Compensation Act, 1923, to set the order dated 09.10.2019 made in E.C.No.383 of 2015 on the file of the Court of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-II) at Chennai.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Ms.Ramya V.Rao

For R2 : notice dispensed with



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JUDGMENT

This Civil Miscellaneous Appeal is preferred by the appellant/Insurance Company, challenging the judgment and decree dated 09.10.2019 made in E.C.No.383 of 2015 on the file of the Court of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-II) at Chennai.

For the sake of convenience, the parties are referred as described before the Authority.

2. The accident occurred on 09.09.2015, at about 4.00 hours when the 1st respondent/applicant was driving the TATA TARACE BENZE LORRY bearing Registration No. TN 31 AJ 7178 owned by the 2nd respondent/1st respondent on ECR Salai, near Prarthana Theatre, Chennai-119, at that time, a Ashok Leyland lorry driver slowed the vehicle which was proceeded in front of the applicant lorry. Though the 1st respondent/applicant applied brake, which went vain, hit against the back side of the Ashok Leyland lorry. Due to which



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the applicant suffered grievous injuries. Accordingly, claim for compensation was made by the injured. The Commissioner for Workmen's Compensation awarded a sum of Rs.3,91,392/-(Rupees Three Lakhs Ninety one Thousand, Three hundred and Ninety Two only) at 12% interest.

3. Aggrieved by this, the Insurance Company is on appeal.

4. Through this appeal, award has been challenged on the ground, that, the disability assessed to the injured at 40% is on the higher side.

5. At the time of admission of this appeal, the following substantial questions of law are framed:

1. Whether physical disability can be equated to loss of earning capacity?

2. Whether physical ailments such as scar and indigestion will be equated to loss of earning capacity?

3. Whether disability can be assessed in violation of I Schedule of EC Act?



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*4. Whether oral evidence is sufficient to hold
employer-employee relationship?*

Substantial Questions of Law Nos.1 to 4

6. Mr. M. Krishnamoorthy, learned counsel appearing for the appellant/Insurance Company would submit that the physical disabilities such as scar and indigestion cannot be assessed at 40%. Hence, the award passed by the learned Commissioner requires interference.

7. On the other hand, M/s. Ramya V. Rao, learned counsel for the 1st respondent/1st claimant would submit that the applicant suffered fractures and multiple grievous injuries all over the body in the said accident. He was in-patient from 09.09.2015 to 23.09.2015 and undergone surgery on 09.09.2015. Later on, the applicant took treatment in private Hospitals and is unable to perform every day activities and his earning capacity is reduced to zero. Her further contention is that, the applicant has suffered permanent disability which was rightly assessed to 40% by the Doctor, which calls for no



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interference.

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8.Heard on both sides, records perused.

9.The appellant claimed compensation for the injuries suffered by him under the provisions of Workmen's Compensation Act. The Tribunal has awarded a compensation of Rs. 3,91,392/- to the claimant. There is no dispute with regard to the manner of accident and liability. It is also not in dispute with regard to employer-employee relationship and the alleged accident occurred in the course of employment. The only contention of the learned counsel for the Insurance Company is that, the disability assessed at 40% is on the higher side. The disability Certificate is marked as Ex.P.11 in which the disability is assessed to 40%. The claimant has examined the Doctor who had issued the disability certificate as P.W.2. The evidence of P.W.2 is extracted as hereunder:

"கரைமேடு காலணியில் வசிக்கும் நடேசன் குமாரர்
ராஜீவ்காந்தி என்பவருக்கு கடந்த 09.09.2015 அன்று
அதிகாலை 4.00 மணியளவில் ஏற்பட்ட விபத்தில் அடிப்பட்டு



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கொடுங்காயம் அடைந்தமைக்காக நிரந்தர ஊனச்சான்று
வேண்டி என்னிடம் கடந்த 29.07.2019 அன்று வந்தார்.
நான் மனுதாரரையும், அவர் தன்னுடன் வந்திருந்த
ஆவணங்களான டிஸ்சார்ஜ் சம்மரி, அரசு ராயப்பேட்டை
மருத்துவமனை, விபத்து பதிவேடு நகல், அரசு ராயப்பேட்டை
மருத்துவமனை, ஆகியவற்றை பரிசீலனை செய்தேன்
அவருக்கு

1.Blend Trauma

2.Abdomen with emergency laprotomy repair

*3.CT Abdomen – Pelvis Haematoma with free
fluid in pertoneal cavity*

ஏற்பட்டுள்ளது தெரிய வந்தது. எனது
ஆலோசனையின் பேரில் எடுக்கப்பட்ட நுண்கதிர் படம்
எடுக்கவில்லை. மேற்கொண்டு செய்யப்பட்ட எனது மருத்துவ
பரிசோதனையில் மனுதாரருக்கு வயிறு பகுதியில் அடிப்பட்ட
காயத்தழும்பு மற்றும் அறுவை சிகிச்சைசெய்த தழும்பு
உள்ளது. தொடுவலி உள்ளது. அஜீரண கோளாறு
இருப்பதாக தெரிவித்தார். குனிந்து வேலைகள் செய்ய
முடிவதில்லை வண்டி ஓட்ட முடிவதில்லை. தொடர்ந்து
உட்கார்ந்து இருக்கவும் முடிவதில்லை.



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கருத்துரை மேற்குறிப்பிட்ட பாதிப்புகள் அனைத்தும்
விபத்தினால் ஏற்பட்டவை ஆகும். அதனால் மேற்கண்ட
திரு.ராஜுவ்காந்தி என்பவருக்கு ஏற்பட்ட ஊனத்தை
கணக்கீடு செய்ததில் அவருக்கு ஏற்பட்ட ஊனம் 40%
(நாற்பது சதவீதம்) என்றும் அது பகுதி நிரந்தரமானது
என்றும் சான்றளிக்கிறேன்"

10.From the above evidence, P.W.2 seems to have simply conducted a clinical test and assessed the disability. The injuries related to this case were not specified in Schedule I and as such cases are covered by Section 4(1)(c)(ii) Explanation. In terms of Explanation II the qualified medical practitioner has to assess loss of earning capacity having due regard to percentage of loss of earning capacity in relation to the different injuries in Schedule I. Explanation I also provides that where there are more than one injury, the aggregate has to be taken, so that the amount which would be payable for permanent total disablement is not exceeded. Therefore, loss of earning capacity is not a substitute for percentage of the physical disablement. In other words, the disability assessed by the Doctors and the loss of earning capacity to be fixed by the Competent Authority must be nearer and in



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commensuration with the disability percentage in order to avoid grant of excess compensation or lesser compensation. It is settled position that a Medical Practitioner are not competent to assess the loss of earning capacity, which is not relatable to the Medical Profession. In such circumstances, the Courts are empowered to fix the loss of earning capacity by taking into consideration the facts and circumstances of each case. Therefore, the assessment of the Doctor is not a conclusive factor. In certain cases Courts are empowered to fix the loss of future income over and above the disability percentage based on the nature of the job of the injured. A Medical Practitioner can assess the disability by examining the injured and such an examination is in no way connected with the loss of income to be fixed by the Courts based on various other factors. At the outset, the facts and circumstances and the nature of injury as well as the nature of the job are the deciding factors for the purpose of fixing the compensation. In the present case, there is nothing on record to show that the claimant is total disabled from performing his duties as a driver or any other work. The physical disabilities such as scar and indigestion cannot be equated to loss of earning capacity. Considering the above facts, this Court is of the opinion that the loss of



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earning capacity fixed by the learned Commissioner found to be little excessive. In that view of matter, this Court feels that the ground urged by the Insurance Company in this appeal appears to be acceptable. The Workmen's Compensation Commissioner ought to have retuned a finding on the nature of injury, the percentage of disability and the loss of earning capacity.

11.Upon a careful consideration of the evidence, both oral and documentary, this Court takes a view that the assessment of disability made by P.W.2 is on a higher scale. Having regard to the various materials available on record, this Court is of the considered view that the permanent disability suffered by the claimant can be reasonably fixed at 20%.

12.Accordingly, the compensation awarded by the learned Commissioner Workmen's Compensation is reduced from Rs.3,91,392/- to Rs.1,95,696/-.The claimant is entitled for award of Rs.1,95,696/- with 12% interest from the date of accident till the date of deposit. Accordingly, the above substantial questions of law are answered.

13.Since it is informed to this Court that the Insurance Company



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has already deposited the award amount, as per the order of the learned Commissioner, the Insurance Company is at liberty to withdraw the excess amount already deposited before the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour Court-II, Chennai) CAMP at Cuddalore, by filing appropriate application before the said forum.

14.In the result, the Civil Miscellaneous Appeal is Partly Allowed.

No costs. Consequently, connected miscellaneous petition is closed.

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vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To

1. The Motor Accident Claims Tribunal,

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Commissioner of Workmen's Compensation
(Deputy Commissioner of Labour-II) Chennai.

2. The Section Officer,
VR Section, High Court, Madras.



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