

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.12.2013

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

C.M.A. NO.3652 OF 2010

R.Murali

.. Appellant

Versus

1.R.Shyamala

KRB Transport,
No.1, Rettaimalai Srinivasan Street,
Puzhal, Chennai - 600 066.

2.United India Insurance Co. Ltd.,

No.44, Whites Road,
Sudarsan Buildings II Floor,
Chennai - 600 014.

.. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the judgment and decree in W.C.No.280 of 2009 dated 11.05.2010 on the file of the Deputy Commissioner of Labour-II, (Commissioner for Workmen's Compensation - II), Chennai - 600 006.

For Appellant	:	Mr.U.M.Ravichandiran
For Respondent-1	:	No Appearance
For Respondent-2	:	Mr.C.Paranthaman

* * * * *

सत्यमेव जयते
J U D G M E N T

Against the order passed in W.C.No.280 of 2009 by the Deputy Commissioner of Labour-II (Commissioner for Workmen's Compensation-II), Chennai-600006, this Civil Miscellaneous Appeal is filed.

2. A claim of Rs.6,00,000/- under the Workmen Compensation Act was made and the Deputy Commissioner of Labour-II awarded a compensation of Rs.3,18,773/-. Aggrieved by the same, the present appeal has been preferred.

3. The two substantial question of laws raised before this Hon'ble Court are

"1. Whether the Deputy Commissioner of Labour-II ought to have fixed the loss of earning capacity at 100% ?

2. Whether the appellant is entitled to interest at the rate of 12% p.a. from the date of accident under Sec 4A(3) of the W.C. Act ?"

4. The appellant a driver by profession was the claimant before the Deputy Commissioner of Labour-II. While driving the Lorry (MIX Concrete) with Registration No TN-20-AR-0515 owned by the first respondent, on the night of 21.01.2009, he met with an accident and as a result, sustained serious injuries. He claimed compensation for having lost 100% earning capacity in view of the nature of injury and disability, along with interest at the rate of 12% p.a. from the date of accident. The first respondent, the employer did not appear before the Deputy Commissioner of Labour-II. The second respondent contested the claim disputing that the accident did not occur in the course of employment, that the First Information Report is fabricated and the appellant caused the accident due to the negligence.

5. The appellant examined himself as P.W.1. The Doctor as P.W.2 and twelve Exhibits including the Disability Certificate were marked. No documentary as well as oral evidence was let in on behalf of the respondents. After considering the facts, the documentary and oral evidence and the Disability Certificate issued by the Doctor at 60%, the Deputy Commissioner of Labour-II fixed the monthly income at Rs.4,000/- and awarded a sum of Rs.3,18,773/-. Aggrieved with, the claimant has preferred this appeal.

6. The learned counsel for the appellant scrupulously argued that the Doctor has assessed the disability by 60%, but the loss in earning capacity in reality is 100%. The learned counsel further agitated that the Deputy Commissioner of Labour-II failed to consider the nature of injury, by which, the appellant can no longer drive and that he cannot attend any other work like an ordinary man. Because of the incapacity, he cannot secure renewal of driving licence and therefore his loss in earning capacity is 100%. Further, he contended that interest @ 12% p.a. from the date of accident ought to have been awarded and that the directions to pay interest only upon failure to pay the award amount within 30 days is unsustainable and contrary to Section 4A(3) of the Workmen's Compensation Act. Reliance was placed upon the judgments in 1976 A.C.J. 141 [PRATAP NARAIN SINGH DEO vs. SHRINIVAS SABATA], 2012 (1) TNMAC 216 [D.SHANMUGA ANAND vs. M.BALASUBRAMANIAN] and 2012 (2) TNMAC 750 [ORIENTAL INSURANCE CO. LTD. vs. R.MAHALINGAM] to illustrate that disability is different from earning capacity and all that matters is whether he can perform

the same work after the accident which he was doing prior to accident. The learned counsel for the appellant also relied upon the Division Bench Judgment of this Court reported in 2010 (2) TNMAC 80 [N.GANESAN vs. THILAGAVATHI] to claim interest from the date of accident.

7. Per contra, the learned counsel for the second respondent contended that in the facts and circumstances of the case, the compensation awarded is just. By relying upon the statement of the Doctor during cross-examination that "the claimant can walk by wearing ordinary Chappal". The learned counsel contended that the disability is only 60%, the appellant, even if he is incapable of driving can go for some other job and hence prayed for dismissal of the appeal.

8. Heard the learned counsels for the Appellant and the second respondent. Despite service of notice, the first respondent has not appeared.

9. Upon perusal of the award, this Court finds that the Deputy Commissioner of Labour-II has not even discussed about applicability of "Total disablement". The point for consideration is the difference between disability in medical prudence and disability in the light of loss in earning capacity. The very purpose for the enactment of Workmen's Compensation Act was to pave way of compensation to the workmen for injury by accident.

10. The factum of accident and the fixation of monthly salary are not disputed by Appellant as well as the second respondent. As per the Disability Certificate issued by the Doctor, who was examined as P.W.2, the Injury occurred to the appellant is "CRUSH INJURY RIGHT LIMB GRADE III B, COMPOUND COMMINUTED FRACTURE TIBIA PROXIMAL 3rd WITH BIMALLELOR FRACTURE RIGHT SIDE AND OTHER MULTIPLE INJURIES ALL OVER THE BODY". The Disability was declared to be a permanent but partial at 60%. In Serial Number 7 in the Certificate, the disability was declared as partial and in Serial Number 8, the disability was declared as permanent. Therefore, it can be understood that the disability is incurable and the appellant has to live with the disability throughout his life.

11. Section 2 (1) (1) of the Workmen's Compensation Act (Now called as the Employees' Compensation Act, 1923) defines "Total Disablement" as follows:

"Such disablement, whether of a temporary or permanent nature, as incapacitates a employee for all work which he was capable of performing at the time of the accident resulting in such disablement."

12. But in cases for compensation, it is not the disability which is partial or total alone that matters, it is the loss in earning capacity as a result of accident that is to be considered.

13. As per section 4 (3) of the Motor Vehicle Act, 1988:

" No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section."

14. After the accident, the licence of the appellant to drive the Transport Vehicle had expired. A reading of Section 15 together with Section 8 (3) and (4) of the Motor Vehicles Act makes it clear that unless a Medical Certificate to the effect that the appellant is fit to drive is produced, the driving licence would not be renewed. Needless to say that no Doctor would declare the appellant as fit to drive either a transport or non-transport vehicle. The power to cancel the licence already issued is also available to the Regional Transport Officer under Section 16 if he has reasonable grounds to believe that the holder of the driving licence is, by virtue of any disease or disability, unfit to drive a motor vehicle. Considering that the injury is on the hip, right leg and ankle, the appellant can no longer drive a vehicle as he cannot exercise absolute control over it.

15. In the Judgment reported in 1976 A.C.J. 141 [PRATAP NARAIN SINGH DEO vs. SHRINIVAS SABATA] relied upon by the appellant, the Hon'ble Apex Court while dealing with the question of whether the injury resulted in total disablement, leaning on to Section 2 (1) (1) of the Workmen's Compensation Act held as follows:

"It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

"The injured workman in this case is carpenter by profession.... By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only."

This is obviously a reasonable and correct finding. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal. There is also no justification for the other argument which has been advanced with reference to item 3 of Part II of Schedule I, because it was not the appellant's case before the Commissioner that amputation of the arm was from 8" from tip of acromion to less than 4 1/2" below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted or established."

16. In the Judgments reported in 2012 (1) TNMAC 216 [D.SHANMUGA ANAND vs. M.BALASUBRAMANIAN] and 2012 (2) TNMAC 750 [ORIENTAL INSURANCE CO. LTD. vs. R.MAHALINGAM], following the earlier decisions of the Hon'ble Apex Court, appreciating the provisions of Workmen's Compensation Act, 1923 and the fact that the injured therein was a driver, held the disability to be total resulting in loss of 100% earning capacity. The case on hand is squarely covered by the above decisions.

17. Even though it is contested by the second respondent that the Doctor during cross-examination has stated that the appellant can walk with ordinary chappals, it is not in dispute that the appellant can no longer work as a driver. Being a driver, he would not be accustomed to any other work and what is to be looked into is only whether he can work as the driver after the accident. As the injury is to the right leg, he cannot effectively apply the break and accelerator. In the first place, he would not even be able to sit and operate the vehicle comfortably. The appellant is 27 years old today. The accident has already taken away 4 years of quality life in him. It has also deprived him the normal life expected out of a man of his age. Leave alone the driving of the vehicle, he cannot move as swiftly as he was moving prior to the accident. Even if he applies for some other job, there would always be a doubt not only in his mind but also in the mind of such employer as to whether he can perform his duties efficiently. The very doubt would itself create depression in the mind of the appellant and not permit him to do any work efficiently. Therefore, the contention of the second respondent that he can do some other work cannot be accepted. In view of the above decisions, the definition of total disablement under the Workmen's Compensation Act and the restrictions under the Motor Vehicles Act for grant of licence, I hold that the disability as total for the purpose of calculating the loss in earning capacity of the appellant.

18. The next issue on hand is whether the appellant is entitled to interest at 12% p.a. from the date of accident.

19. Section 4A of the Workmen's Compensation Act deals with compensation to be paid when due and penalty for default. Section 4 A (3) reads as follows:

"Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall -

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent, per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due;"

20. The Division Bench of this Court in the Judgment reported in 2010 (2) TNMAC 80 [N.GANESAN vs. THILAGAVATHI] following the decision of the Hon'ble Apex Court reported in 1976 (1) SCC 289 [PRATAP NARAIN SINGH DEO vs. SHRINIVAS SABATA] and 2000 ACJ 5 [KERALA STATE ELECTRICITY BOARD vs. VALSALA, K.], held that the word "falls due" occurring under section 4A of the Workmen's Compensation Act means that interest for compensation amount would accrue 30 days after the date of accident and not from the date of quantification/orders passed by the commissioner for Workmen's Compensation. Therefore, the direction of Deputy Commissioner of Labour-II to pay interest only if the amount is not deposited within 30 days from the date of order is unsustainable. So is the argument of the learned counsel for the appellant that the appellant is entitled to interest from the date of accident. The appellant is entitled to interest from the 31st day of the accident i.e from 21.02.2009.

21. In the result, the Civil Miscellaneous Appeal is allowed. The order of the Deputy Commissioner of Labour-II is modified to the effect that the disability has resulted in 100% loss in earning capacity and hence the compensation of Rs.5,31,288/- is to be paid to the appellant along with interest @ 12% p.a. from 21.02.2009 after deducting the amount already paid. The second respondent is direct

the pay the arrears with interest within a period of four weeks from the date of receipt of a copy of judgment. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sri
To

1.The Deputy Commissioner of Labour-II,
(Commissioner for Workmen's Compensation - II),
Chennai - 600 006.

Copy to:The Section Officer,
V.R.Section,
High Court of Madras,
Chennai - 600 104.

+2 cc to Mr.U.M.Ravichandiran Advocate sr.66394
+2 cc to Mr.C.Paranthaman, Advocate sr.65982

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