

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.06.2015

Coram:

The Hon'ble Mr.Justice N.KIRUBAKARAN

C.M.A.(NPD)No.1651 of 2002

S.Viswalingam

.. Appellant / Applicant

Vs

1. S.Jayanthi

2. United India Insurance Co. Ltd.,
Motor Third Party Cell,
38, Anna Salai,
Chennai - 600 002.

.. Respondent / Claimants

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act against order dated 10.06.2002 made in W.C.No.48 of 2000 on the file of the Deputy Commissioner of Labour-II, Chennai - 6.

For Appellant : Mr.S.Vadivel
For R-2 : Mr.V.Gopalakrishnan
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J U D G M E N T

This appeal has been preferred by the appellant/claimant against the dismissal of his claim petition by the Commissioner of Workmen Compensation.

2. The case of the claimant is that he was an employee under the first respondent and he was working as a lorry driver, getting a sum of Rs.750/- per week as wages. On 26.03.1998 at about 9.00 a.m., when the claimant was driving the lorry bearing Registration No.TN-04-0-8170 on G.N.T. Road at Durai Nallur Village, Thiruvallur District, a lorry bearing Registration No.AAQ 5113 driven rash and negligently hit against the lorry driven by the claimant causing accident. In the accident, the claimant sustained multiple grievous injuries on his left leg and he lost his four teeth. He was taken to hospital and given treatment. He filed the claim petition stating that during the accident he was under the employment of the first respondent and sustained injury during course of employment and therefore, claimed a sum of Rs.3,00,000/- as compensation.

3. The claim petition was resisted by the second respondent / Insurance Company. The claimant examined P.W.2-Doctor (orthopedics Surgeon) and P.W.3-Doctor (Dentist) to prove the disability. P.W.2-Doctor deposed that the claimant sustained fracture in the left leg and four teeth were broken and because of that, there was a swelling in the brain and there was mal-union of fractured bones and because of that, the claimant is unable to stand for a long time and there is a restriction in the movement of legs and therefore, he cannot function as a driver. Hence P.W.2-Doctor determined the disability at 45%. Similarly, P.W.3-Doctor would depose that four teeth were permanently broken on the upper jaw and assessed the disability at 15%. Though the Deputy Commissioner of Labour-II, Chennai, based on the evidence, came to the conclusion that during the time of accident, the claimant was working under the first respondent as a driver and during the course and out of employment the accident had occurred and he sustained injuries, the Commissioner found that the claimant's driving licence got expired on 27.02.1999 and thereafter, the claimant renewed the licence on 16.09.2002. Since the driving licence was renewed on 16.09.2002, after the accident occurred viz., 26.03.1998, the Commissioner found that there was no disability sustained by the claimant and there was no loss of income and dismissed the claim petition.

4. At the time of admission, the following substantial questions of law were framed:-

"a) Whether the appellant is disqualified from claiming compensation if he renews his driving licence subsequent to the date of accident?

b) Whether the non renewal of the driving licence after the accident shall give rise to a presumption that the disability caused to the applicant does not lead to any income loss?"

5. A reading of the award would reveal that there is no dispute with regard to the employment of the claimant under the first respondent at the time of accident and the accident occurred during the course and out of employment and he also sustained disability because of the accident. When such a categorical finding has been given by the Commissioner, the Commissioner ought not to have dismissed the claim petition merely because the claimant got renewed the licence subsequent to the date of the accident. The accident occurred as early as on 26.03.1998 whereas the claimant was able to renew the lincense on 16.09.2002. Getting the renewal of driving licence itself would not denote that there was no disability and there was no loss of income, when P.W.3-Doctor categorically deposed about the disability and further fortified by P.W.1's evidence and in the absence of any contra evidence on the side of the respondents, the Commissioner should not have dismissed the claim petition.

Therefore, this Court sets aside the dismissal of the claim petition by the Workmen's Compensation Commissioner and based on available evidence, the compensation is determined as follows:-

The claimant claimed that his monthly income, at the time of accident, was Rs.3,000/- and the said amount is hereby taken for calculating the compensation. The disability suffered by the claimant can neither be 45% as deposed by P.W.2 nor 30% as deposed by P.W.3. Therefore, this Court takes average of disability at 37.5%. The relevant factor is 218.47, according to the age of the claimant viz., 24.

Compensation :: 60/100 x 218.47 x 3000 x 37.5/100
 :: Rs.1,47,467.25/-

Regarding the other expenses, a sum of Rs.2,500/- is awarded and in all, a sum of Rs.1,49,967.25/-, rounded off to Rs.1,50,000/- is awarded along with interest at the rate of 12% from the date of expiry of 30 days from the date of accident, as per the judgment of the Four Judges' Bench of the Honourable Apex Court, in Pratap Narain Singh Deo V. Sreenivas Sabata and another reported in 1976 (1) SCC 289. Since the accident had occurred on 26.03.1998, the interest is payable from 26.04.1998 till the date of payment. Both the questions of law are answered in favour of the appellant/claimant.

6. The second respondent / Insurance Company, as a insurer of the first respondent, has to pay the amount and therefore, the second respondent / Insurance Company is directed to pay the entire amount along with interest and costs, within a period of four weeks from the date of receipt of a copy of this order, before the Deputy Commissioner of Labour-II, Chennai, and the said Officer is directed to pay the entire amount to the claimant within one week thereafter.

Jrl

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Deputy Commissioner of Labour-II,
Chennai - 6.
2. The United India Insurance Co. Ltd.,
Motor Third Party Cell,
38, Anna Salai,
Chennai - 600 002.

+ 1 cc to Mr.S.Vadivel, Advocate SR 31719

+ 1 cc to Mr.V.Gopalakrishnan, Advocate SR 31945

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prk1/7

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