

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.15 of 2016

Kamalanathan
S/o Ponnudurai

.. Appellant

-Vs-

1. Dhillip Kumar
S/o Madhavan
(R1 remained ex parte before the Tribunal

2. Oriental Insurance Co.Ltd.,
Oriental House, II Floor
New No.216, Prakasam Road
Broadway
Chennai 600 108

.. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 30(1) of the Workmen's Compensation Act, against the order dated 7.4.2014 made in W.C.No.382 of 2012 on the file of the Deputy Commissioner of Labour-II, Chennai.

For Appellant :: Ms.M.Malar

For Respondents :: Mr.S.Manohar for R2
R1- Exparte

JUDGMENT

This civil miscellaneous appeal is directed against the impugned order passed by the Deputy Commissioner of Labour-II, Chennai in W.C.No.382 of 2012 dated 7.4.2014 for enhancement of compensation.

2. Learned counsel for the appellant submitted that the Deputy Commissioner of Labour-II, Chennai has wrongly assessed the loss of earning capacity at 55% instead of 100%, since the claimant was not able to continue his avocation as he did before the accident. The learned counsel further submitted that the Deputy Commissioner of Labour also erred in fixing the monthly income of the claimant including allowances at Rs.6,368/- per month, when he was earning a sum of Rs.4,000/- per month along with Rs.300/- as daily allowance.

2. But this Court is not able to agree with either of the contentions made by the learned counsel for the appellant. It is not in dispute that the appellant, aged about 49 years, was working as a Cleaner of the vehicle owned by the first respondent and earning a sum of Rs.4,000/- per month along with Rs.300/- as daily allowance. During the course of his employment on 21.5.2012 in the lorry bearing Registration No.AP-26-W-0473, on the instructions of the first respondent, while getting down from the rear side, the driver of the lorry moved the lorry in a rash and negligent manner, as a result he unexpectedly fell down and sustained grievous injuries. Immediately he was taken to Sri Kumaran Hospital and was taking treatment from 21.5.2012 to 23.5.2012 as an in-patient. The Deputy Commissioner of Labour, disbelieving the evidence of the claimant that he was earning a sum of Rs.4,000/- per month along with Rs.300/- as daily allowance, since no documentary proof was produced, fixed the monthly income of the claimant at Rs.6,368/- i.e., Rs.3,570/- as basic salary plus Rs.2,798/- as allowance, in terms of G.O.(2D) No.64, Labour and Employment Department dated 23.7.2009 under the Minimum Wages Act. On this basis, the Deputy Commissioner of Labour, considering the evidence of the doctor and the injuries sustained by the claimant, arrived at the loss of earning capacity of the claimant at 55% and awarded a compensation of Rs.3,28,812/-. The Deputy Commissioner of Labour, considering the medical bills under Ex.P9, also awarded a sum of Rs.44,806/- towards the medical expenses. Thus the claimant was awarded a sum of Rs.3,73,618/- as the total compensation. Since the first respondent remained ex parte before the Tribunal and that the vehicle was insured with the second respondent at the time of accident, the Deputy Commissioner of Labour has directed the second respondent Insurance company to deposit the entire compensation amount within a period of thirty days from the date of the order, failing which the claimant was entitled to simple interest at the rate of 12% per annum on and after a period of thirty days from the date of accident on 21.5.2012 till the date of payment. Therefore, this Court is not able to see any infirmity or illegality in the impugned order. Accordingly, the civil miscellaneous appeal fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

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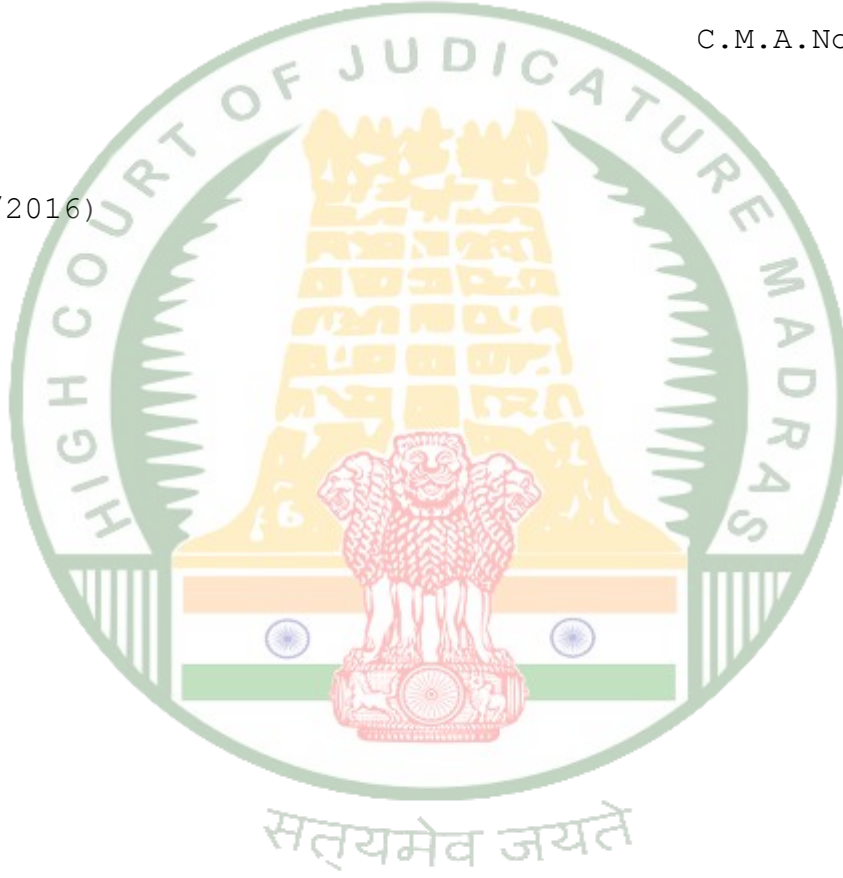
Sub Assistant Registrar

To

1. The Deputy Commissioner of Labour-II,
Chennai.
2. The Oriental Insurance Co Ltd.,
Oriental House II Floor,
New No.216, Prakasam Road,
Broadway, Chennai-600 108.

C.M.A.No.15 of 2016

rsk(CO)
srg(25/04/2016)



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