

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2489 of 2015

N.Sureshbabu

.. Appellant

Versus

1.Authority under the Workman Compensation/
Deputy Commissioner of Labour-2,
DMS Complex, Teynampet,
Chennai-6.

2.T.Prahaladhan

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workman's Compensation Act, 1923 against the award dated 17.08.2015 made in W.C. No.386/2013 on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour at Chennai.

For appellant : Mr.P.Nagaraju

For respondents : R1-Forum
Mr.N.Nanmaran for R2

J U D G M E N T

The Deputy Commissioner of Labour for Workmen's Compensation - II has passed an award granting a sum of Rs.4,25,649.60 as compensation for the grievous injuries sustained by the injured/workman with a condition that the said amount shall be paid by the employer/appellant herein within 30 days, failing which 12% interest will be paid thereon. The employer/appellant being aggrieved, has approached this Court by way of filing this appeal on the two grounds namely, the Commissioner has failed to consider the fact that P.W.2/ Doctor has wrongly assessed the disability, which is not in accordance with the Workmen's Compensation Act and the injured/workman was under intoxication at the time of occurrence. According to him, these vital aspects have been completely overlooked by the Commissioner.

2.This Court, while entertaining these pleas, has issued

notice to the other side and also granted an order of stay on 30.10.2015. Aggrieved over the same, the injured/workman finding it difficulty to eke out his livelihood, has filed a petition seeking to vacate the order of interim stay.

3.Learned counsel for the injured/workman would submit that on 10.04.2013 at about 8.00 a.m. while the injured/workman was working under the employer/appellant's premises, accidentally sustained severe crush injury in his right upper limb and in addition thereto, he also suffered fracture of right humerus middle third and also sustained nerve radial injury. Immediately after the accident, the employer took him to AG Hospital, Tambaram along with co-employees and after getting first aid treatment in the said hospital, he went to Puthur Bone Setting Hospital for effective treatment and thereafter, he was admitted as inpatient for a period of 77 days in Kilpauk Government Hospital for speedy recovery. He would further submit that although the employer/appellant herein was attending the injured/workman, he has not come forward to pay any adequate or sufficient compensation. Therefore, he was constrained to file F.I.R. During the period of treatment in the Kilpauk Medical College Hospital, a surgery was also done in his right hand and plate has been fixed for the fractured humerus and screw has also been fixed for the bone getting united. After treatment, the muscle power in the right upper limb has been reduced by a grade from the normal grade 5 and there was a difficulty in the right upper limb and due to the same, movements have been restricted and right hand grip has been reduced. Considering the above said injuries sustained by the injured/workman, Doctor Mathiyalagan, who was examined as P.W.2, has assessed 50% partial and permanent disability.

4.The claim made by both parties clearly indicates that on 10.04.2013 at about 8.00 a.m., the injured/second respondent herein, aged about 35 years, who was working as a Crusher Machine Operator, has sustained injuries while working under the employer/appellant herein. Immediately after the injuries sustained by him, he was taken to AG Hospital, Tambaram. After taking first aid, he was referred to Puthur Bone Setting Hospital and thereafter, he was admitted as in-patient at Kilpauk Government Hospital for a period of 77 days.

5.It is seen that the Commissioner has fixed a sum of Rs.8,000/- as monthly salary of the injured/workman, which is against the admission made by the employer, who has stated that the injured/workman was paid a sum of Rs.3,000/- as weekly salary. While calculating the total compensation, the Commissioner, on the basis of the age of the injured, has fixed 197.06 as his age factor and has fixed the disability at 45%, though the same was recommended by the Doctor at 50%. Finally, a

sum of Rs.4,25,649.60 has been arrived at towards total compensation.

6. When the employer/appellant herein has admitted that firstly, immediately after the accident took place on his premises, he took the injured/workman to the nearest hospital for first aid treatment along with the co-employees, secondly, the injured/workman was paid a sum of Rs.3,000/- as weekly salary by him, thirdly, he has also taken him to Puthur Bone Setting Hospital for better treatment, it is not open to the employer/appellant herein to take a wrong stand that the occurrence has not taken place in his premises. While so, the employer/appellant, in my considered view, ought not to have challenged the impugned award.

7. Therefore, this Court, confirming the impugned award, is inclined to impose cost of Rs.25,000/-, which should be paid by the appellant herein to the injured/second respondent herein. Since the entire award amount has already been deposited, the cost of Rs.25,000/- shall also be paid within a period of two weeks from the date of receipt of a copy of this order, failing which, it will also carry interest at the rate of 12% per annum.

8. Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga

To

1. The Commissioner for Workmen Compensation,
Deputy Commissioner of Labour at Chennai.

2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.P. Nagaraju, Advocate, S.R.No.65561
+1cc to N. Nanmaran, Advocate Sr.No.65031 (14/12/2016)

ev (CO)
md(08/12/2016) (14/12/2016)

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