

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.1376 of 2001

S.Nagarajan ... Appellant

Vs.

1) C.Murugadoss

2. National Insurance Co. Ltd.,
No.751, Anna Salai
Chennai - 600 006 ... Respondents

Civil Miscellaneous Appeal filed under Section 76 of the W.C Act against the order dated 02.02.2000 passed in W.C.No.8 of 1999 by the Commissioner for Workmen's Compensation II, Chennai - 600 006 which was received by the appellant on 24.10.2000.

For Appellant : Mr.K.A.Ravindran

For Respondents: Mr.K.Suryanarayanan for R2

R1-Dispensed with

JUDGMENT

Challenging the award passed by the Commissioner for Workmen's Compensation - II, Chennai, this memorandum of Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 by the claimant for enhancement.

2. This appeal came to be admitted on the following two substantial questions of law:

1) Whether the Commissioner for Workmen's Compensation-II has power to reduce the percentage of disability and fix the same as 30% when the doctor fix the loss of earning capacity as 40%?

2) Whether the Commissioner for Workmen's Compensation-II ought to have awarded interest at the rate of 12% p.a from the date of accident under Sec.4A (3) of W.C.Act, when the award was passed on merit?

3. Heard Mr.K.A.Ravindran, learned counsel for the petitioner and Mr.K.Suryanarayanan, learned counsel for the second respondent.

4. The appellant Nagarajan had moved the Workmen's Compensation Tribunal with a claim petition under Section 10(1) (a) of the Workmen's Compensation Act claiming a sum of Rs.2,50,000/- as compensation in his favour for the injuries sustained by him while he was under the employment of the first respondent/employer. It is manifested that on 22.06.1997, at about 04.45pm while the appellant was driving the Car bearing Registration No.TN60-E-9999 belonging to the first respondent herein along Chennai to Trichy Road (NH45), it happened to collided with a container trucker, as a result of which the appellant had sustained fracture of both bones over his left hand.

5. As per the evidence of PW2-Dr.R.Angamuthu, the disability suffered by the petitioner was assessed at 40%. The claimant was aged about 36 years at the time of accident. The Tribunal, while passing the award, had reduced the percentage of disability to 30% from 40% and as the petitioner was aged about 36 years at the relevant period, the age factor was fixed at 194.64 and accordingly an award was passed for a sum of Rs.70,070/-.

6. Mr.K.A.Ravindran, learned counsel for the petitioner has restricted his argument only on two substantial questions of law i.e., whether the Commissioner for Workmen's Compensation - II, Chennai has power to reduce the percentage of disability from 40% to 30% and secondly with reference to the calculation of interest. The learned counsel has argued that the Commissioner ought to have calculated the interest from the date of accident as contemplated under Section 4-A(3) of the Workmen's Compensation Act.

7. With regard to first substantial question of law is concerned, the learned counsel has made reference to an unreported order of this Court decided on 03.08.2015 made in C.M.A.No.1445 of 2008 (C.Karuna V. Sri Jayesh Enterprises). In the said case also, a similar substantial question of law was formulated i.e., Whether the Deputy Commissioner of Labour-I can reduce the disability, while the disability has been assessed by Doctor and the same was accepted by the trial Court? In the

said case, a learned single Judge of this Court had found that the Commissioner of Labour, in spite of the evidence of PW1 and Ex.P7/Disability Certificate issued by him and in the absence of any contra evidence adduced on the side of the respondent / employer, has erred in reducing the disability from 40% to 35% without rendering any sufficient reason.

8. In the given case on hand, Dr.Angamuthu, after examining the appellant/claimant clinically, had found that there was fracture of both the radius and ulna of left side fore arm for which he was operated and fixed with plate and screws. He had also stated that the claimant's left arm movement was restricted by fifty degrees and that the applicant, being a driver, would find it difficult to drive the vehicle and he could not carry heavy weight and therefore, PW2 had assessed the disability suffered by the claimant at 40%. It is also found that PW2 had not treated the appellant/claimant and he had also not recorded in the Disability Certificate about the documents which he perused before issuing the Disability Certificate. The Commissioner in his award had stated that it was admitted that the assessment of disability might vary from doctor to doctor. Further, the Commissioner had also observed that PW2-Doctor had not provided the basis on which he had fixed the disability at 40%.

9. The learned Commissioner had further observed that the doctor's assessment was only approximate and therefore, he had assessed the disability at 30%. After fixing the wages of the claimant as per the minimum wages G.O.No.625 dated 25.05.1999 at Rs.2089/-, he had computed the compensation as under:

Age factor for 36 years	-	194.64	
Monthly wages	-	Rs.2089/-	limited to Rs.2000/-
Loss of earning capacity	-	30%	
Compensation payable	-	$60 \times 194.64 \times 2000 \times 30$	
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		100	100

Total Rs.70,070.40
(Rounded off to Rs.70,070/-)

10. This Court has meticulously analysed the calculation made by the Deputy Commissioner of Labour with the assessment of 30% of the disability. Having regard to the procedure adopted by the Deputy Commissioner, this Court does not find any discrepancy or infirmity in reducing the percentage of disability from 40% to 30% as the Commissioner had assigned reason for this reduction. Accordingly, the Substantial Question of Law No.1 is answered as against the appellant.

11. Insofar as the Substantial Question of Law No.2 is concerned, with reference to the calculation of interest at the rate of 12% per annum, in the operative portion of the award, the Commissioner had directed the respondent/opposite party to deposit the said sum of Rs.70,070/- with 12% interest per annum before the Tribunal within one month from the date of filing of this petition. In this connection, Mr.K.A.Ravindran, learned counsel for the appellant has contended that the Commissioner of Workmen's Compensation-II ought to have awarded interest at the rate of 12% per annum from the date of the accident under Section 4-A(3) of the Workmen Compensation Act, 1923 without imposing any condition which would give loopholes to the respondent to evade payment of interest for the award amount. In support of his argument he has placed reliance upon the following two decisions:

1. Pratap Narain Singh Deo V. Shrinivas Sabata and another reported in 1976 ACJ 141; and
2. N.Ganesan V. Thilagavathi and others reported in 2010 (2) TNMAC 80 (DB).

12. In the decision first cited supra, the Apex Court has held that it is the duty of the employer to pay compensation as soon as the personal injury is caused to the workman and the employer had failed to pay compensation. Under this circumstance, a question was arisen before the Apex Court when the case came up for hearing as to whether the employer was liable to pay penalty and interest. By way of answering the said question, the Apex Court has held that Section 19 of the Workmen's Compensation Act, 1923 does not suspend the liability. Therefore, the above said question was answered in affirmative form. Insofar as this issue is concerned Paragraph No.8 of the above cited decision is very much relevant:

"8. It was the duty of the appellant, under section 4-A(1) of the Act to pay the compensation at the rate provided by section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the

respondent to file a memorandum of agreement setting the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."

13. In the decision cited second supra, a Division Bench of this Court, after referring to catena of cases, held that the interest on compensation is payable after 30 days from the date of accident. Paragraph No.27 is very much relevant and it is extracted as under:

"27. In the result, the reference is answered as follows:-

i.The word "falls due" occurring under Section 4-A of the Workmens Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench decision of the Honble Supreme Court of India reported in Pratap Narain Singh Deo v. Srinivas Sabata and another, 1976(1) SCC 289 and Kerala State Electricity Board vs. Valsala.K 2000 ACJ page 5(SC), means that interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/ orders passed by the Commissioner for Workmens Compensation.

ii.The decisions rendered by the Single Bench of this Court in the decisions reported in Marimuthammal @ Marimuthu and Another v- R.P.P.Construction (P) Ltd., Chennai and others, 2007 (2) TNMAC 98: 2007 (5) MLJ 1059: A.Chairmen v- A.Thirumeni & Another, 2008 (1) TNMAC 38 had laid down the correct proposition in consonance with the ratio laid down by the Larger Bench of the Honble Supreme Court of India in the above cited decisions.

iii.The Registry is directed to list these appeals for final disposal before the concerned Portfolio Judge."

14. Section 4-A of the Workmen's Compensation Act, 1923 deals with compensation to be paid when due and penalty for default. For better appreciation, Section 4-A of the Workmen's Compensation Act is extracted hereunder:

"4-A. Compensation to be paid when due and penalty for default-(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

[(3) 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; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty :

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed."

15. Sub-Section (3) in an unambiguous term clarifies that where the employer fails to pay compensation within one month from the date it fell due, the Commissioner shall direct that the employer to add a simple interest at the rate of 12% per annum. Therefore, as decided by the Apex Court as well as the Division Bench of this Court in the decisions cited supra, the interest at the rate of 12% shall have to be paid along with the compensation due after 30 days from the date of accident.

16. Hence, the contention of the learned counsel for the appellant that the Deputy Commissioner of Workmen's Compensation - II ought to have awarded interest at the rate of 12% per annum from the date of the accident under Section 4-A(3) is not sustainable. As observed in the decision cited supra, the interest at the rate of 12% per annum shall have to be calculated after 30 days from the date of the accident. Therefore, the second substantial question of law is answered accordingly.

In the result, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Commissioner for Workmen's Compensation II, Chennai is set aside insofar as it relates to the payment of interest from the date of filing of the claim petition and the second respondent is directed to pay the interest at the rate of 12% per annum after 30 days from the date of accident.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner for Workmen's Compensation -II,
Chennai-600 006.
- 2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.A.Shanmugaraj, Advocate Sr.40002
+1cc to Mr.K.Suryanarayanan, Advocate Sr.40003

C.M.A.No.1376 of 2001

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