

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.823 of 2001

N.Ganesan

...Appellant/Applicant

....vs....

1.Tmt.Thilagavathi

2.United India Insurance Co.Ltd.,

Motor Third Party Claim Cell,

No.38, Anna Salai, Chennai - 2.

... Respondents/Opposite party

Prayer: Civil Miscellaneous Appeal is filed to set aside the award made in W.C.No.51 of 1999 dated 14.10.1999 on the file of the Commissioner for Workmen's Compensation-I, Chennai-6.

For Appellant

:Mr.A.Shanmugaraj

For R2

:Mr.C.Ramesh Babu

R1

:NA

JUDGMENT

Questioning the calculation of interest for the award amount granted by the Commissioner for Workmen's Compensation-I, Chennai - 6 with from the date of the accident, this appeal is filed by the appellant/employer.

2. Heard Mr.A.Shanmugaraj, learned counsel appearing for the appellant and Mr.C.Ramesh Babu, learned counsel appearing for the second respondent.

3.The appellant is the claimant in the Claim Petition in W.C.No.51 of 1999 on the file of the Commissioner of Workmen's Compensation - II, Chennai - 6.

4. It appears from the records that the appellant was working as van driver under first respondent. His monthly salary was Rs.2,500/- besides daily batta of Rs.20/-. On 25.12.1997 at about 3.30 a.m, while the appellant was driving the van bearing Regn.No.TN 69 Z 7773, belongs to first respondent herein at Paramakudi to Madurai Main Road, near Sundanandhalipakkam

village, Paramakudi Taluk, Ramnadu District, it was collided with a trailer lorry which came from opposite direction and as a result of which the appellant had sustained injuries. Claiming, totally a sum of Rs.2,58,000/-, he had filed a Claim petition in W.C.No.51 of 1999. Despite the contest made by the second respondent, the Commissioner of Labour -I, Chennai had proceeded to award totally a sum of Rs.2,03,318/-, directing the second respondent/Insurance Company to pay this amount within 30 days from the date of receipt of a copy of this order, failing which 12% interest will be added from the date of accident.

5.Questioning the quantum of this appeal came to be admitted on the following substantial questions of law.

1) Whether the Commissioner ought not to have fixed the loss of earning capacity of the appellant at 100%, while the appellant is not in a position to do any normal work especially the driving work, after the accident?

2) Whether the Commissioner for workmen's Compensation -I has power to reduce the percentage of disability and fix the same as 80% when the Doctors fix the loss of earning capacity at 85%?

3) Whether the Commissioner for Workmen's Compensation -I ought not to have awarded interest at the rate of 12% per annum from the date of accident, when the award was passed on merit?

6.It is brought to the notice of this Court by Mr.A.Shanmugaraj, learned counsel for the appellant confronting decisions taken by this Court in various cases, which are as follows:-

"2.In a case reported in Velu Ammal and others V.Sri Krishan Agencies and another, reported in 2007(1) TN MAC 391:2007(3) CTC 378, a learned Judge of this Court (K.Venkataraman,J.) by placing reliance upon the judgment reported in National Insurance Co.Ltd. V. Mubasir Ahmed and another, reported in 2007 (1) TN MAC 214:2007 ACJ 845, has held that the payment of compensation payable under Workmen's Compensation Act, 1923 will become due on the date of adjudication of the claim and not on the date of the accident."

3. In a case reported in H.Dawood and another v. L.Thangarajan and others, 2007(2)TN MAC 235:2007 (4) CTC 468; 2007(5) MLJ 999, a learned Judge (N.Paul Vasanthakumar, J.) by placing reliance upon the above cited decisions of the Hon'ble Supreme Court of India, has held that the Appellants therein are not entitled to get interest from the date of claim petition and they are entitled to get interest only after 30 days from the date of determination of the compensation amount.

4.In Marimuthuammal @ Marimuthu and another v.

R.P.P.Construction (P) Ltd., Chennai and others, 2007(2) TN MAC 98;2007 (5) MLJ 1059, a learned Judge of this Court (R.Banumathi,J.,) after placing reliance upon the Larger Bench Judgment of the Hon'ble Supreme Court of India, reported in Pratap Narain Singh v. Srinivas Sabata, 1976 (1) MLJ 235 (SC), and the judgment rendered by the three Judges Bench of the Hon'ble Supreme Court of India reported in Kerala State Electricity Board v.Valsala, K.,2000 (1) CTC 563 (SC);2000 ACJ 5 (SC), has held that as per Section 4-A(1) of the Workmen's Compensation Act, 1923, the compensation becomes due on the date of the accident and consequently interest is payable from that date.

8.Regarding the calculation of interest at the rate of 12% per annum either from the date of accident or 70 days after the date of accident. The learned Single Judge of this Court had directed the Registry to post the above batch CMA. Nos. 823,1162,1411,1559,1664 of 2001, 940 of 2002, 949, 1206, 2416, 2846 of 2003,131,673,2076,2387,2500,2513,2668,2704,2730,3105,3197,3214, 3280 of 2004, 211,741,788,991,1714,1719,2780,3434 and 3474 of 2005 before the larger Bench of this Court as to the starting point of payment of interest payable by the employer to the claimants.

7.Under these circumstances, the above said C.M.As. were posted before the Division Bench headed by the Hon'ble Mr.Justice D.Murugesan for answering the above said reference.

8.It is significant to note here that the first appeal in the above batch is the present appeal viz., C.M.A.No.823 of 2001. After analysing various factors relating to this case and on referring the catena of cases, the Division Bench in paragraph No.27 of the appeal has observed as under:-

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

i. The word "falls due"occurring under Section 4-A of the Workmen's Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench decision of the Hon'ble Supreme Court of India reported in Pratap Narain Singh Deo v. Srinivas Sabata and another, 1976 (1) SCC 289 and Kerala State Electricity Board v. Valsala, K., 2000 ACJ 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 Workmen's 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) TN MAC 98; 2007(5) MLJ 1059; A. Chairmen v. A. Thirumeni & another, 2008(1) TN MAC 38 had laid down the correct proposition in consonance with the ratio laid down by the Larger Bench of the Hon'ble 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.

9. As per the observation made by the Division Bench of this Court in the above cited decision, it is thus made clear that the interest at the rate of 12% shall have to be calculated 30 days after the date of accident and not from the date of quantification/orders passed by the Commissioner for Workmen's Compensation.

10. In so far as this appeal is concerned, already it has been decided in similar nature of appeals that the Commissioner of Workmen's Compensation -I is having discretion to determine the disability of the claimants or to reduce the disability to certain extent because the disability fixed by the doctors is not in accordance with any standard rules and therefore the disability fixed by the doctors have vary from doctors to doctors.

11. In so far as third issue is concerned, the doctors have fixed the disability at 85%. However, the Commissioner of Workmen's Compensation-I had fixed the disability at 80% and awarded the compensation accordingly.

12. In so far as the third issue is concerned, as per the decision of the Division Bench cited supra, the interest at the rate of 12% on the award amount shall have to be calculated 30 days after the date of the accident.

13. With this observation, this appeal is disposed of, confirming the award of the compensation.

Sd/-
Asst. Registrar (CS V)

/true copy/

Sub Asst. Registrar

nvi

To

1. The Commissioner for Workmen's Compensation-I, Chennai-6.

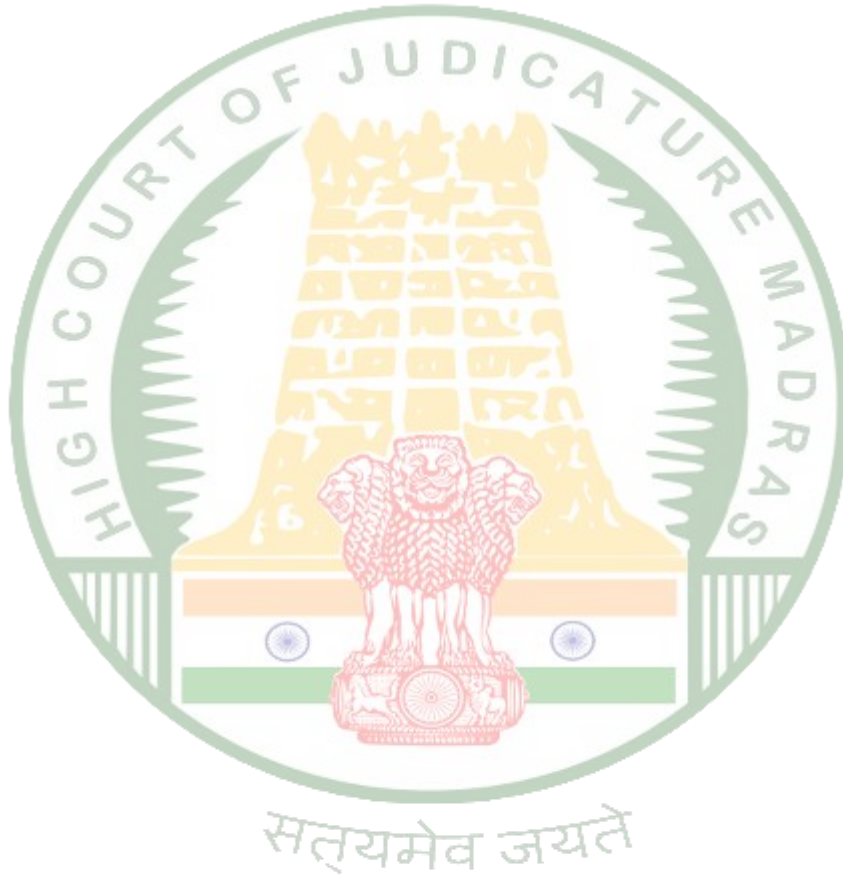
+lcc to Mr.A.Shanmugaraj, Advocate, Sr. No 43035

+lcc to Mr.C.Ramesh Babu, Advocate, Sr. No.42935

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CA (CO)

GN (23/01/2017)



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