IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :19.12.2016

Judgment Pronounced on : 16.11.2017

CORAM: THE HON'BLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.323 of 2002
and CMP.No.18466 of 2005

K.R.Saravanan .. Appellant

Vs

1.Velu

2.The New India Assurance Co. Ltd.,
12, New Hospital Road,
Gobichettipalayam,
Erode District. .. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, against the order dated 07.02.2001 made in W.C.No.219 of 2000 passed by the Deputy Commissioner of Workmen Compensation, Salem and allow this appeal.

For Appellant : Ms.P.T.Rama Devi
For Respondents : R1 – Dispensed with
R2 - Mr.J.Chandran

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JUDGMENT

The appellant was a claimant before the Commissioner under Workmen's Compensation Act. He was a driver of a lorry bearing No.TDS 7603 that belongs to his employer, the first respondent herein. The said vehicle was

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insured with the second respondent. On 25.07.1994, when he was driving the lorry, he met with an accident, in the course of which, he suffered serious injuries which among other things led to the amputation of his left leg. The doctor, who evaluated the extent of his disability has assessed that the appellant has suffered 75% disability. The appellant claimed that he was earning Rs.3,000/ in the petition, but in his evidence he quoted his salary as Rs.5,000/. As no credible evidence was forthcoming, the Commissioner reckoned his income as per G.O.14 2(D) Labour and Employment Department dated 19.3.1991 and fixed his income at Rs.1,000/- p.m and arrived at the total compensation of Rs.81,341/-. This is now challenged.

2. On perusal of papers, it appears that there was an omission to frame substantial question of law when the case was admitted, therefore, the following substantial question of law is now framed :

1. Whether the Commissioner under Workmen's Compensation Act was correct in treating the extent of disability of the appellant based on Schedule I Pt.II List 20?

2. Is it not appropriate that the disability suffered by the appellant is treated at 100% disability based on the nature of his avocation?

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3. The learned counsel for the appellant submitted that, Vide judgments in ***K.Janardhan Vs. United India Insurance Company Limited and Another*** [(2008) 8 SCC 518] and ***S.Suresh Vs. Oriental Insurance Company Limited and Another*** [(2010) 13 SCC 777], in cases where the driver has lost a leg below the knee, the Supreme Court has treated the same as 100% disability. Secondly, the Commissioner was in error in adopting the scheduled rates of income for fixing the income of the appellant at Rs.1,000/- per month, when he at least should have given the same at Rs.3,000/-, going by his pleadings.

4. *Per contra* the learned counsel for the second respondent had argued justifying the method adopted by the Tribunal.

5. The claim is of the year 1994, some 23 years from now. When a driver loses his leg then his livelihood is lost permanently. Therefore, there is merit in the argument of the appellant that the extent of disability that the appellant had suffered is 100%. In fitness of things, including the daily batta that a driver is normally entitled to, his monthly salary can be reasonably fixed at Rs.2,500/- going by 1994 standards. Accordingly, compensation payable would be Rs. 2,71,137.50 [Rs.2,500 x 50 x 100% x 216.91] (rounded off to Rs.2,71,200/-).

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7. In the result, the appeal is allowed and the award amount of compensation payable is enhanced from Rs.81,341/- to Rs.2,71,200/- and the second respondent/insurance company is directed to deposit the enhanced compensation amount with interest at 12% from the 31st day of the accident, less any amount already deposited, within a period of four weeks from the date of receipt of a copy of this order, whereupon, the claimant is entitled to withdraw the same forthwith. The claimant is directed to pay the necessary court fee for the enhanced portion of the award amount. No costs. Consequently, connected miscellaneous petition is closed.

16 .11.2017

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Index : Yes / No

Internet : Yes / No

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To:

1.The Deputy Commissioner of Workmen Compensation
Salem.

2.The Section Officer,
VR Section,
High Court, Madras.

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N.SESHASAYEE,J.,

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Pre-delivery Judgment in
CMA.No.323 of 2002

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