

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.08.2017

Coram:

The Honourable Mr.Justice R.SUBRAMANIAN

C.M.A.Nos.1134 and 1135 of 2011

M.Sekar

.. Appellant in
C.M.A.No1134 of 2011

T.Thangaraj

.. Appellant in
C.M.A.No.1135 of 2011

Vs.

1.S.Charles

2.ICICI Lombard General Insurance Company
Limited, Chhottabai Centre,
No.140, Nungambakkam High Road,
Chennai-600 034.

.. Respondents in
both appeals

Civil Miscellaneous Appeals filed under Section 30 of the Workmen Compensation Act, 1923 as against the orders dated 03.08.2010 made in W.C.Nos.313 and 311 of 2008 respectively on the file of Deputy Commissioner of Labour-II, Workmen Compensation at Chennai.

For Appellant : Mr.K.Varadhakamaraj
in both appeals

For respondents : Ms.R.Srividhya for R2
in both appeals

COMMON JUDGMENT

Both these appeals have been filed by the claimants in W.C.No.313 and 311 of 2008 respectively. Both the claims arise out of the same accident. It is the case of the claimants that when they were travelling in a mini lorry belonging to the first respondent as loadmen, the said lorry met with an accident as a result of which, they sustained grievous injuries which resulted in total disablement and hence, they claimed compensation of Rs.5,00,000/- lakhs each.

2. The claim was resisted by the second respondent-Insurance Company contending that the monthly salary claimed by them is on the higher side and they have also denied that the claimants were travelling as loadman in the lorry belonging to the first respondent. The factum of insurance was admitted. It was also contended that the injuries had not resulted in total disablement. Being only fractures, there was only a partial permanent disablement as a result of the accident.

3. The learned Deputy Commissioner of Labour-II, Workmen Compensation at Chennai, who heard the original petition, concluded that the accident had occurred during the course of the employment and that the first respondent being the owner of the vehicle and the second respondent being insurer are jointly and severally liable to pay the compensation and the said finding is not challenged. It is the Deputy Commissioner of Labour-II, Workmen Compensation, Chennai, had assessed the percentage of the partial permanent disability at 40% insofar as the appellant in C.M.A.No.1134 of 2011 and 30% in case of the appellant in C.M.A.No.1135 of 2011 and awarded a sum of Rs.2,06,431/- in C.M.A.No.1134 of 2011 and Rs.1,54,030/- in C.M.A.No.1135 of 2011 and given 30 days time for the Insurance company to deposit the compensation amount and in the event of failure to deposit the same, the Insurance company shall pay interest at 12% from the date of accident till the date of deposit. Challenging the quantum of compensation awarded by the Deputy Commissioner of Labour-II, Workmen Compensation, Chennai, the claimants have come forward with these appeals.

4. I have heard Mr.K.Varadha Kamaraj, learned counsel appearing for the appellant and Ms.R.Srividhya, learned counsel for the second respondent-Insurance Company. The first respondent though served, has not appeared either in person or

through counsel.

5. The following question of law is framed for consideration.

1. Whether the Deputy Commissioner of Labour-II, Workmen Compensation, Chennai, was right in not granting interest after 30 days after the date of the accident in view of the judgment of this Court in N.GANESAN V. THILAGAVATHI AND OTHERS (2010) 2 TNMAC 80(DB)?

6. Mr.Varadha Kamaraj, learned counsel appearing for the appellants/claimants, would contend that considering the nature of the injuries, though the disability has been assessed at 40% and 30% respectively, the claimants, who are admittedly Loadmen, cannot be expected to do the same work and therefore, the Deputy Commissioner of Labour-II, Workmen Compensation, Chennai, was not right in fixing the loss of earning capacity at 40% and 30% respectively. He would further contend that the loss of earning ought to have been fixed at 100%. The injuries are not enumerated in Schedule -I of the Act. The injuries are fractures in the legs. The Doctor, who examined the claimants, has assessed the disability as 90% and on being referred to the Medical Board, the Board has fixed the disability as 40% and 30% respectively and there is no evidence to show that the appellants are not in a position to do the same work. In the absence of such evidence, this Court cannot overrule the conclusions of the experts viz., the Medical Board and enhance the percentage of the disability.

7. Under Section 4(1)(c) of the Workmen's Compensation Act, in certain case of the injuries enumerated in the Schedule, the percentage of the disability shall be fixed as provided for in the schedule. When the injuries are not enumerated in the schedule, the Court has to rely upon expert opinion. In NATIONAL INSURANCE COMPANY LIMITED V. MUBASIR AHMED AND ANOTHER ((2007) 2 Supreme Court Cases 349), the Honourable Supreme Court has held that unless there is valid evidence on the functional disablement, the High Court cannot fix the loss of earning capacity as 100%. In the cases on hand, the Medical Board examined the claimants and has fixed the percentage of the disability. Therefore, I do not see any reason to interfere with the fixation of the percentage of the disability by the Deputy Commissioner of Labour-II, Workmen Compensation, Chennai.

8. Insofar as the grant of interest is concerned, the Commissioner has granted interest from the date of the award. The same cannot be said to be correct in view of the judgment of this Court in N.GANESAN V. THILAGAVATHI AND OTHERS (2010) 2 TNMAC 80(DB), wherein the Division Bench has made it clear that in cases where the accident had happened prior to the amendment, the claimants would be entitled to interest from 31st day of the accident till the date of the deposit at the rate of 12% per annum. The question of law is answered in favour of the appellant. Therefore, the award of the Deputy Commissioner of Labour-II, Workmen Compensation, Chennai, needs modification and is modified as follows:

"The claimant in W.C.No.313 of 2008 (C.M.A.No.1134 of 2011) would be entitled to a sum of Rs.2,06,431/- with interest at 12% per annum from 28.04.2008 till the date of deposit. Similarly, the claimant in W.C.No.311 of 2008 (C.M.A.No.1135 of 2011) would be entitled to a sum of Rs.1,54,030/- with interest at 12% per annum from 28.04.2008 till the date of the deposit."

9. Subject to the above modification, these appeals are partly allowed and the awards of the Deputy Commissioner of Labour-II, Workmen Compensation, Chennai are modified to the extent indicated above. There shall be no order as to the costs.

Sd/-

Assistant Registrar(CO)

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सत्यमेव जयते
Sub Assistant Registrar

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The Deputy Commissiainer of Labour-II
Workmen Compensation
Chennai

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+2 ccs to M/s.M.Pachaiyappan Advocate sr 61233 & 61234
+2 ccs to Ms.R.Sreevidhya Advocate sr 62217 & 62216

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