

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2017

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.1809 of 2016

E.Umapathy

... Appellant/Applicant

..Vs..

1. K.Rani

2. United India Insurance Co. Ltd.,
No.134, Greams Road, IV Floor,
Anna Salai, Chennai 600 006

... Respondents/Opposite
Parties

Appeal filed under Section 30 of the Workmen's Compensation Act, against the award, dated 16.02.2016, made in W.C.No.66 of 2014 on the file of the Commissioner for Workmen's Compensation / Deputy Commissioner of Labour II, Chennai.

For Appellant : Mr. F.Terry Chella Raja

For Respondents : Exparte, R-1 - No Appearance,

Mr. Srinivasa Ramalingam
for R-2

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 16.02.2016, made in W.C.No.66 of 2014 on the file of the Commissioner for Workmen's Compensation / Deputy Commissioner of Labour II, Chennai, which is a claim filed under the Employees Compensation Act, 1923.

2. The claimant, E.Umpathi, who was a driver, by profession, suffered fracture of hip bone and he claimed compensation on the ground that he suffered injury during the course of employment. The Tribunal, taking the age of the workman as 38 and adopting the factor 189.56 and taking the monthly income at Rs.7,337/-, has calculated the loss of earning capacity as also taking the physical disability as equivalent to the functional disability.

3. The said finding of the Tribunal is under challenge by the claimant on the ground that the Tribunal did not even take

the percentage of disability as assessed by the Doctor and without any basis, the Tribunal has fixed the loss of earning capacity as well as the physical capacity at 35%.

4. The learned counsel for the second respondent would submit that the Tribunal is justified in fixing the functional disability at 35% (as the disability) as assessed by the Doctor is not for the whole body, but it was only with reference to the particular limb.

5. The issue that has to be considered in this Appeal is the impact of the physical disability upon the functional ability, de hors whether it is with reference to the particular limb or whether it is with reference to the whole body.

6. It is not in dispute that the workman had been the Driver at the time of accident and therefore, driving would be an impossibility if the fracture in the hip bone is taken into account and when the disability is stated to be 45%, certainly it would be a partial permanent disablement affecting his earning capacity, at least to 50%.

7. The monthly income has been taken by the Tribunal at Rs.7,337/-, i.e., Rs.8,000/- per month. An amendment was notified on 23.12.2009 and made effective from 18.01.2010 by the Central Government to the effect that the employees shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment without any ceiling. A new Section 25A has been added enabling the Commissioner to dispose the matter relating to compensation under this Act, within a period of three months from the date of reference. The wage ceiling limit for working out compensation has been increased from Rs.4,000/- to Rs.8,000/- per month.

8. Despite erosion in the valuation of money and despite escalation in the cost of money and prices of commodities, the Central Government has not chosen to revise the salary of the workman. Therefore, the salary should have been taken at least at Rs.8,000/- per month. Therefore, the calculation of the salary should be taken at Rs.8,000/- per month.

9. Therefore, the Tribunal should have taken the percentage of earning capacity at least taking it as equivalent to the physical disablement, as suggested by the Doctor. Therefore, the loss of earning capacity is assessed at Rs.4,09,445/- $(60/100 \times 189.56 \times 8,000/- \times 45\% = Rs.4,09,449.60$ (rounded off to Rs.4,09,445/-).

10. In the result, the total award of compensation is enhanced from Rs.2,92,068/- to Rs.4,09,445/-. The said award amount shall be deposited, less the amount already deposited, (also less the period of delay in filing / representing the

Appeal, if any), along with interest at 12% (as awarded by the Claims Tribunal) per annum, from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant / appellant herein is entitled to withdraw the same. This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Commissioner for Workmen's Compensation
/Deputy Commissioner of Labour II,
Chennai.
2. The Section Officer,
V.R.Section,
Madras High Court, Chennai 104.

+1cc to Mr.M.Malar, Advocate, S.R.No.6762

+1cc to Mr.Srinivasan Ramalingam, Advocate, S.R.No.6661

C.M.A.No.1809 of 2016

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CA(12/04/2017)

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