

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.2096 of 2015

V.Srinivasan

... Appellant/Petitioner

vs.

1.K.Balakrishnan

2.ICICI Lombard General Insurance Company Ltd.,
Chottabai Center, Third Floor,
No.140, Nungambakkam High Road, Chennai.

3.Managing Director,
Tamil Nadu State Transport Corporation
Kanchipuram, Kanchipuram District.

... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 31 of the Workmen Compensation Act, 1923 to set aside the award dated 15.03.2012 passed in W.C.No.19 of 2008 on the file of the Commissioner of Workmen Compensation-II, Chennai.

For Appellant : Mr.M.R.Sivakumar

For Respondents : Mr.P.Annamalai for R3.

J U D G M E N T

This appeal is directed against the award of the Commissioner Employees Compensation/ The Deputy Commissioner, Labour-II, Teynampet, Chennai-600 006 made in W.C.No.19 of 2008. The appellant is the claimant.

2. The appellant who was working as driver under the first respondent met with an accident in the course of the employment on 07.08.2007 when the lorry driven by him collided with the bus belonging to Tamil Nadu State Transport Corporation has been impleaded as 3rd respondent in the proceedings. As a result of the accident the appellant lost his right leg above the knee and suffered multiple fractures in the left hand.

3. Contending that he cannot continue working as a driver, as a result of the injuries suffered in the accident, he moved the Commissioner for Employees Compensation seeking compensation. The first respondent namely the Employer was set ex-parte before the Commissioner. The second respondent Insurance Company resisted the claim contending that the petitioner has to approach only the Motor Accident Claims Tribunal and cannot approach the Commissioner, Employees' Compensation. The 3rd respondent namely the State Transport Corporation contended that it is not a necessary party before the Commissioner for Workmen Compensation. It was also contended that the driver of the bus was not in any way responsible for the accident.

4. The second respondent Insurance Company has been served, but none appears for them. The first respondent has remained ex-parte before the Commissioner for Employees Compensation and hence the notice to the first respondent is dispensed with.

5. The following question of law arises in this appeal:

1. Whether the Commissioner, Employees Compensation was right in not granting the medical expenses in view of Section 4 (2A) of the Act?

2. Whether the Commissioner, Employees Compensation was right in reducing the loss of earning capacity to 75% without assigning any reason?

6. I have heard Mr.M.R.Sivakumar, learned counsel appearing for the appellant and Mr.R.Annamalai, learned counsel appearing for the 3rd respondent.

7. Mr.M.R.Sivakumar, learned counsel for the appellant would contend that as per the report and evidence of PW2, Qualified Medical Practitioner the percentage of loss of earning capacity caused by the injuries is 90%. The Commissioner without assigning any reason had reduced it to 75%. He would also contend that the Commissioner erred in not granting the medical expenses incurred by him which are evidenced by Ex.P8.

8. As regards the claim for medical expenses, the Section 4 (2A) of the Employees Compensation Act, 1923 as amended by the Act 45 of 2009 provides for payment of medical expenditure. The Commissioner, Employees Compensation has not taken note of the said provision while passing the award.

9. The award having been passed after the introduction of Section 4(2A), I have no doubt that the appellant would be entitled to the medical expenses. Ex.P8 has been filed to show that a sum of Rs.38,450/- has been incurred as medical expenses by the appellant. Therefore, there will be an award for the medical expenses at Rs.38,450/- in favour of the appellant.

10. On the question of disability Mr.M.R.Sivakumar, learned counsel would contend that no reasons has been assigned by the Tribunal for rejecting evidence of the Doctor, PW2. Admittedly, as a result of the accident the right leg of the appellant has been amputated above the knee, he has also suffered several fractures in his left hand which according to the Doctor has reduced the functioning ability of the left hand.

11. Admittedly, the appellant was a driver as a consequence of the injury and amputation of the right leg, he cannot continue his profession as driver. Therefore, I find that the Commissioner, Workmen Compensation was not right in reducing the loss of earning capacity to 75% from 90% as evidenced by the Medical Practitioner.

12. In view of the above both the questions of law are answered in favour of the Appellant and the appellant would be entitled to compensation as follows:

$$\frac{60}{100} \times 209.92 \times 4000 \times \frac{90}{100} = 4,53,427.20 + \text{Medical Expenses of Rs.38,450/-}$$

In all the appellant would be entitled to Rs.4,91,877.20/- rounded off to Rs.4,92,000/-, with interest as awarded by the Tribunal. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1.The Commissioner of Workmen Compensation-II, Chennai.

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

+ 1 cc to Mr.M.R.Sivakumar, Advocate,SR.70720
+ 1 cc to M/s.P.Kannan Kumar, Advocate,SR.70968

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GJII(CO)
NR 10/11/2017