

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.03.2017
CORAM:
THE HONOURABLE Dr. JUSTICE S.VIMALA
C.M.A.No.1704 of 2014

United India Insurance Co. Ltd.,
826, Anna Salai,
Chennai - 2.

... Appellant

versus

1. P.Balamurugan
2. M.Chandra Bose

... Respondents

Appeal filed under Section 30 of Workmen Compensation Act, against the Award dated 23.04.2014 made in W.C.No.236 of 2007 on the file of the Deputy Commissioner of Labour-II, Chennai.

For Appellant : Mr.V.Paranthaman
For R1 : Mr.F.Terry Chellaraja

JUDGMENT

This appeal has been filed by the Insurance Company challenging the award of compensation to the claimant. Challenge is mainly with reference to loss of earning capacity having been fixed at 60%.

2. The respondent/claimant Balamurugan is aged about 21 years, earning a sum of Rs.4,000/- per month as per his salary slip apart from bata of Rs.25/- per day.

3. The claimant has suffered injury while being employed in the lorry bearing Reg. No.TN04Z 9819 belonging to the second respondent in the appeal. As per schedule III (2)(1) and IV of the Employees' Compensation Act, 1923, when there is complete and permanent loss of use of any limb or any particular limb referred in the schedule shall be deemed to be normal loss of that limb.

4. The only ground urged by the learned counsel for the appellant is that the injuries suffered by the claimant and the consequent disability fixed are on the higher side and the same needs to be interfered with.

5. The claimant has suffered fracture in the left leg and multiple injuries all over the body. Dr.Thiagarajan has been examined to speak about the injuries suffered and the extent of disability. His specific evidence is that the claimant has suffered fracture in fibula in the left leg and bones were found protruding beyond the flesh for which surgery was performed and flesh had been taken out and skin surgery has been done. The claimant has suffered restriction in the movement as well as

faces problem in bending the leg. The doctor has also certified that implantation has been used during surgery. If implantation is used, then the question of bending the leg does not arise.

6. Having regard to the nature of the job, the nature of the injury suffered, the treatment taken by the claimant, the impact of the injury on the daily routine of the claimant, the percentage of disability has been fixed at 60%. Though it is contended by the appellant that the percentage of disability fixed is on the higher side, however, no evidence disputing the said fixation has been placed on record to take a different view.

7. Learned counsel for the appellant relied upon the decision reported in 2017 (1) TN MAC 1(SC) (Golla Rajamma etc. vs. The Divisional Manager and another etc.) to contend that a finding rendered on question of fact, this Court cannot interfere with the said finding unless it is shown that the same is illegal and based on no evidence. The relevant portion is extracted hereunder:

"10. The Workmen's Compensation Commissioner, having regard to the evidence, had returned a finding on the nature of injury and the percentage of disability. It is purely a question of fact. There is no case for the Insurance Company that the finding is based on no evidence at all or that it is perverse. Under Section 4(1)(c)(ii) of the Act, the percentage of permanent disability needs to be assessed only by a qualified Medical Practitioner. There is no case for the respondents that the Doctor, who issued the disability certificate is not a qualified Medical Practitioner, as defined under the Act. Thus the Workmen's Compensation Commissioner has passed the order. Thus, the Workmen's Compensation Commissioner has passed the order based on the certificate of disability issued by the Doctor and which has been duly proved before the Workmen's Compensation Commissioner.

11. Under the scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts. The Parliament has thought it fit to restrict the scope of the Appeal only to substantial questions of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is

not within the competence of the High Court under Section 30 of the Act."

8. The above decision is squarely applicable to the facts of the present case. No evidence contra to the finding rendered by the Tribunal having been placed on record, the finding rendered by the Tribunal and the consequential order passed is not liable to be interfered with.

9. Accordingly, the appeal fails and the same is dismissed. No costs.

10. The appellant / Insurance Company is directed to deposit the entire compensation amount awarded along with interest and costs, less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal/Commissioner shall transfer the same directly to the Bank Account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ogy/GLN
To

1. The Deputy Commissioner of Labour-II,
Chennai.

+1 cc to M/s.M.Malar Advocate sr 13375
+1 cc to M/s.C.Paranthaman Advocate sr 13223

सत्यमेव जयते

C.M.A.No.1704 of 2014

ad(co)
aa16/04/2018

WEB COPY