IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.03.2017
CORAM:
THE HONOURABLE Dr. JUSTICE S.VIMALA
C.M.A.No.2596 of 2014
and M.P.No.1 of 2014

The New India Assurance Company Ltd.,
No.77, First Avenue,
Indira Nagar, Adyar,
Chennai - 600 020. ... Appellant / 2nd respondent

versus

1. A.Ponnusamy ... 1st respondent/claimant (Petitioner)

2. National Asphalt Products and Construction company,
Khivraj Complex, 480, Anna Salai,
Nandanam, Chennai - 35. ... 2nd respondent/1st respondent

Prayer : This Appeal filed under Section 30 of the Employee's Compensation Act, 1923, against the order dated 16.07.2014 made in W.C.No.266 of 2012, on the file of the Court of Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II), Chennai - 6.

For Appellant : Mr.Dhakshnamoorthy
For R-1 : Mr.K.Varada Kamaraj
For R2 : No appearance

JUDGMENT

The Tribunal, while awarding compensation to the claimant, has assessed the compensation at Rs.2,75,864/- as against the claim made for Rs.5,00,000/-. Challenging the quantum of compensation as excessive, the Insurance Company has filed this appeal, raising the following substantial questions of law:

1. Whether the assessment made by the learned commissioner is in accordance with Section 4(1)(c)(ii) of Employee's Compensation Act when as per the provisions of Section 4(1)(c)(ii) of the Employee's Compensation Act, where the injuries are not in the nature specified in the schedule I of the said Act, the qualified medical practitioner has to assess the percentage of loss of earning capacity due to the permanent partial disablement. Does the WC Commissioner can assess the loss of earning capacity based on the percentage of disability assessed by a

Medical practitioner for the injuries not coming under the Schedule I of the Employees Compensation Act.

2. When the Insurance policy is a contract between the Insurer and the Employer to indemnify for liability incurred but subject to terms and conditions of the policy whether the WC Commissioner has power under the Act to fasten liability on the insurer directly, where the liability on the insurer is not statutory but contractual.

2. The case of the claimant/first respondent herein is that he was working as an employee under the second respondent and he was earning a sum of Rs.300/- per day. During the discharge of his work, electrical power passed through the stick which was held by the claimant due to which he suffered serious injuries and consequently, there was loss of earning capacity.

3. The Employer admitted that he was paying a sum of Rs.275/- per day as salary and as there was an insurance policy coverage to the employees for the period from 01.04.2011 to 31.03.2012, and, therefore, it was submitted that the Insurance Company is liable to pay compensation to the claimant.

4. While assessing quantum of compensation in respect of the burn injuries on the right hand, which resulted in loss of holding capacity in the right hand, the disability had been assessed at 25% and 5% had been assessed in respect of bending of bones in 4^{th} and 5^{th} fingers of left leg.

5. It is the contention of the learned counsel for the Insurance company that the injuries in fingers are not grievous in nature and therefore, 5% cannot be considered and if that percentage is left out, then the calculation for compensation would be at Rs.2,33,026/- (60% x 178.49 x 8000 x 25% = Rs.2,14,188/- + Rs.18,838/- towards medical expenses).

6. This Court has considered the above contention advanced by the learned counsel for the insurance company. A perusal of the injuries suffered by the claimant reveals that the disability assessed at 5% is not warranted on the facts of the case. This Court, considering the injuries sustained by the claimant modifies the award as under, accepting the contention advanced by the learned counsel for the insurance company :

Loss of earning capacity (Rs.8000 x 25% 178.49 x 60%)	-	Rs.2,14,188/-
Medical expenses	-	Rs. 18,838/-
Total	-	Rs.2,33,026/-

7. It is also contended by the learned counsel for the appellant Insurance Company that there is no clause in the policy to pay interest and if at all the claimant claims interest, the same has to be claimed only from the owner/employer and the insurance company cannot be made liable to pay interest.

8. A perusal of the terms governing the insurance policy reveals that in the event of any unforeseen event, the liability on the insurer is only to the extent of compensating the person with the assured amount and interest is not contemplated. Therefore, the contention of the learned counsel for the appellant that the insurance company is not liable to pay interest is sustainable. However, the claimant cannot be made to suffer without payment of interest and the interest component on the compensation amount has to be paid by the owner. Accordingly, this Court holds that Insurance Company shall pay the compensation of Rs.2,33,026/- and the interest on the said amount will be paid by the employer.

9. In the result, this Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.2,33,026/- as awarded by this Court shall be payable by the Insurance Company. Insofar as interest is concerned, the claimant is entitled for interest at 12% p.a. from the date of expiry of 30 days of the accident till the date of deposit, which shall be paid by the employer/2nd respondent. No costs. Consequently, connected miscellaneous petition is closed.

10. The insurance company is directed to deposit the award amount as ordered above, less the amount, if any, already deposited, to the credit of the petition before the Tribunal within a period of four weeks from the date of receipt of a copy of this order. The employer/2nd respondent herein, is directed to deposit the interest at 12% p.a. as ordered above, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to

transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ogy/gln

To

The Commissioner for Workmen's Compensation-II
(Deputy Commissioner of Labour-II),
Chennai - 6.

copy to
The Section Officer
VR Section HighCourt Madras

+1 cc to Mr.S.Dhakshnamoorthy Advocate sr 14035
+1 cc to Mr.K.Varadhakamaraj Advocate sr 14041

C.M.A.No.2596 of 2014

aa08/06/2018