

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

CMA.No.2184 of 2013

M.Vadivel,
No.52, Pillayar Koil Street,
Mettupalayam,
West Mambalam,
Chennai 600 033

...Appellant/Petitioner

vs.

1.DEE TECH PROJECTS LTD.,
No.129, IInd Floor, Aani Street
Chinmaya Nagar,
Chennai 600 092.

2.TWARD Board & Dee Tech Projects Ltd.,
No.129, IInd Floor, Aani Street
Chinmaya Nagar,
Chennai 600 092.

3.National Insurance Co. Ltd.,
No.661, Trunk Road,
Poonamallee,
Chennai 600 056.

... Respondents/Respondent

The Civil Miscellaneous Appeal is filed under Section 30 of the Workmens' Compensation Act against the order dated 12.02.2013 passed in W.C.No.89/2011 by the Deputy Commissioner of Labour - II (Commissioner for Workmen's Compensation - II), Chennai 600 006 and praying to set aside the same.

For Appellant : Mr.A.Shanmugaraj

For Respondents : Mr.P.Sankaranarayanan (for R3)

No appearance (for R1 & R2)

J U D G M E N T

This appeal is directed against the award of the Deputy Commissioner of Labour - II passed in W.C.No.89/2011. The appellant is the claimant. As a result of the accident, his right hand was amputated between wrist and the elbow. The

commissioner of Workmen's Compensation -II, on consideration of the evidence on record, concluded that the injury being the Schedule I injury falling within Part II entry 4, provides for loss of earning capacity at 60%. Section 4(1)(c) of the Act provides for determination of compensation, in case of permanent/partial disablement resulting from injury and in case of an injury specified in Schedule I, such percentage of compensation which would have been payable in permanent total disablement as specified therein has to be the percentage of loss of earning capacity caused by that injury.

2. Therefore, in cases of injuries which come under the schedule, the loss of earning capacity as fixed by the schedule has to be followed by the Commissioner of Workmen's compensation or by this Court, as the case may be. The Commissioner of Workmen's compensation has rightly calculated the loss of earning capacity at 60%, based on the schedule to the Workmen's Compensation Act.

3. Mr.A.Shanmugaraj, Learned Counsel for the appellant would however contend that amputation is of the right hand, thus rendering the appellant unable to perform any other work. Therefore, the tribunal should have taken the loss of earning capacity at 100 % and not at 60%. He has also relied upon the judgment of the Hon'ble Supreme Court in Pratap Narain Singh Deo Vs. Shrinivas Sabata and Another reported in 1976 ACJ 141. He would also rely upon the judgment of mine in R.Karunakaran Vs. Hi-Techno Construction, CMA.No.2475/2016. In both the cases, namely, the case before the Hon'ble Supreme Court as well as CMA.No.2475/2016, the injured claimant was a Carpenter, whose fingers got amputated and thus, it was found that he cannot do any work and hence the loss of earning capacity caused by the injury was taken at 100%. The same cannot be applied to the present case as the appellant is only a helper in concrete machine and it is not shown that the injury has rendered him unfit for doing any work. Section 2(1) of the Act defines "total disablement" as follows:-

(1)"total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement: (Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. Or more;)

From the above provision, it is clear that when the injuries were, as specified in Part I of the Schedule, loss of earning capacity should be taken as specified in the said Part, unless the percentage of the loss of earning capacity as specified in

the said part for the injury is 100% or more. Therefore, I do not think there is any error in the order of the Commissioner of Workmen's Compensation granting a sum of Rs.2,99,491/- as compensation. Further, appeal could be entertained by this Court only substantial question of law is no more under Section 30 of Workmen's Compensation Act, I do not see any question of law much less substantial question of law in this appeal.

4. Mr.A.Shanmugaraj, learned Counsel for the appellant would contend that the Commissioner should have granted interest after 30 days from the date of accident without default clause. In view of the judgment of the Hon'ble Supreme Court reported in 1976 (1) SCC 289, the claimant would be entitled to interest from the 31st day after accident till date of deposit without any default clause.

5. Hence, the appeal is partly allowed with reference to interest alone. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sai

To

The Deputy Commissioner of Labour - II
(Commissioner for Workmen's Compensation - II),
Chennai 600 006.

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.65689

+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.65594

RSI(CO)
GN(11/10/2017)

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