

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 02.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.Nos.2294 of 2013 & 2535 of 2014
and M.P.No.1 of 2014

P.Nagarajan Appellant
in C.M.A.No.2294 of
2013/Respondent
in C.M.A.No.2535 of 2014

-vs-

Central Leather Research Institute,
rep by its Director
Adyar, Chennai - 600 020. Respondent
[in C.M.A.No.2294 of 2013]
.... Appellant in CMA No.2535/2014

Common Prayer: Civil Miscellaneous Appeals filed under Section
30 of the Workmen Compensation Act, against the order dated
11.03.2013 made in W.C.No.38 of 2007 on the file of the Deputy
Commissioner of Labour I, Chennai.

For Appellant in C.M.A.No.2294 of 2013 &
For Respondent in C.M.A.No.2535 of 2014 :Mr.Balan Haridas

For Respondent in C.M.A.No.2294 of 2013 &
For Appellant in C.M.A.No.2535 of 2014 :Mr.T.Ravikumar

C O M M O N J U D G M E N T

These appeals arose out of the order dated 11.03.2013
passed by the Deputy Commissioner of Labour-I, Chennai.

2. Nagarajan / claimant [appellant in C.M.A.No.2294 of
2013 and respondent in C.M.A.No.2535 of 2014] made a claim for
compensation against the Central Leather Research Institute

[respondent in C.M.A.No.2294 of 2013 and appellant in C.M.A.No.2535 of 2014].

3. The case of the claimant is that, he was an Air Conditioner Technician and employed in Central Leather Research Institute [hereinafter referred as C.L.R.I.]. On 05.09.1998, in the course of his employment, a cutting plier, which was used for the work fell on his left eye and as a result of which, he sustained injury. Immediately, he was taken to a Doctor attached to C.L.R.I. He was referred to Government Eye Hospital for further treatment. According to him, he has undergone eye surgeries thrice at Sankara Nethralaya, Chennai. He claimed a total compensation of Rs.5,00,000/-. He filed the claim petition in the year 2007 with a petition to condone the delay in filing the claim petition.

4. Admittedly, the delay in filing the petition was condoned and the claim petition was taken on file. C.L.R.I. filed a counter statement resisting the claim of the claimant stating that there was no employer-employee relationship between the claimant and C.L.R.I. They have also taken a stand that no liability lies against C.L.R.I., as the injury dating back to 1998. According to them, C.L.R.I. have no records to show that the claimant sustained injury on the premises of C.L.R.I.

5. Before the Deputy Commissioner of Labour-I, the claimant examined himself as P.W.1. He has marked 7 Exhibits. He has also examined a Doctor / Eye Surgeon [P.W.2]. On behalf of C.L.R.I. one of its Scientists was examined [R.W.1]. They have marked 10 Exhibits. After considering the materials made available, the Deputy Commissioner of Labour-I found that the claimant was an employee of C.L.R.I. and the accident had taken place in the course of employment and awarded a compensation of Rs.45,989/-.

6. The claimant preferred C.M.A.No.2294 of 2013 for enhancement of the compensation. Challenging the finding on the question of liability, C.L.R.I. preferred C.M.No.2535 of 2014.

7. The case of the C.L.R.I. is that they are not liable to pay the compensation, as there was no employer-employee relationship between the claimant and C.L.R.I. It is to be seen that whether the relationship of employer-employee existed between the claimant and C.L.R.I. on the date of accident. The learned counsel for the C.L.R.I. would submit that in the official records, there is no indication to show that the claimant was employed by them on the date of accident. Ex.P.2 is the Acquittance Register pertaining to permanent employees from August 1998. The accident occurred on 05.09.1998. The contention of the C.L.R.I. is that, as the name of the claimant does not

find a place in the Acquittance Register, he cannot be taken as an employee of C.L.R.I.

8. The learned counsel for the C.L.R.I. pointed out that the Industrial Tribunal in its award in 31/08 has held that the claimant was not a workman of C.L.R.I. Ex.R.10 is the copy of the award of the Tribunal. It is not in dispute that the claimant filed a writ petition challenging the order of the Industrial Tribunal and the same is pending. As the award has not attained finality, I am inclined to place any reliance on the award to hold that the claimant was not an employee on the date of accident.

9. Ex.P.1 is the Certificate issued by a Scientist of C.L.R.I. It is dated 26.11.1999. Ex.P.2 is the Certificate issued by a Scientist incharge of A/C Department. It is dated 07.08.2002. Ex.P.1 Certificate would clearly show that the claimant was working on contract basis since 04.08.1997 in C.L.R.I. and he was engaged in the maintenance of Air Conditioners. Ex.P.2 would show that the claimant was working on contract basis since 26.11.1999 in C.L.R.I. These Certificates were issued by responsible officials of C.L.R.I. It is significant to note that R.W.2 who has given evidence on behalf of C.L.R.I. has issued Ex.P.2 Certificate.

10. The learned counsel for the C.L.R.I. would submit that the Certificates were issued by the incompetent officials and they will not bind C.L.R.I. However, the genuineness of these Certificates was not disputed. Therefore, there is no difficulty in placing reliance on Ex.P.1 and Ex.P.2. The evidence of R.W.1 coupled with Ex.P.1 and Ex.P.2 would clearly establish that the claimant was engaged in the maintenance work on the premises of C.L.R.I.

11. The Commissioner on appreciation of materials available on record has come to the conclusion that the claimant was employed in C.L.R.I. and in the course of employment, he sustained injuries to his eye. The learned counsel for the C.L.R.I. would submit that the claimant underwent surgeries in the year 2004 and during that period, he was an employee of M/s.Narendra Engineering works and therefore, C.L.R.I. was not liable to pay the compensation.

12. Ex.P.6 issued by the Director-cum-Superintendent of Regional Institute Opthalmology and Government Opthalmic Hospital, Egmore, would show that the claimant was treated for the injuries sustained by him in September 1998 and the injury developed as a full cataract in the year 2003 and the injured was operated at Government Eye Hospital and he was followed up till September 2004. It is also certified that the claimant

developed retinal detachment and operated outside. The Superintendent given the Certificate as per Hospital records. This Court does not find any reason to doubt the genuineness of Ex.P.6 Certificate. It is seen from the evidence of P.W.2 Doctor that the claimant sustained 30% permanent disability Ex.P.7 is the Disability Certificate. The claimant took treatment at Sankara Nethralaya as could be seen from Ex.P.3. It also proves that he underwent surgeries thrice.

13. On a careful analysis of records, I am satisfied that the claimant was an employee on the date of accident and he sustained injuries in the course of his employment. The findings of the Commissioner in this regard deserve to be upheld.

14. Coming to the question of quantum of compensation, it is seen that the Commissioner treated the claimant as coolie and fixed his salary at Rs.1,150/-. He relied on Ex.R.8 Certificate produced by C.L.R.I. The age of the claimant was 21 years. The learned counsel for the claimant would submit that the Commissioner ought to have fixed monthly income in accordance with the Notification issued under Section 2(b) of the Minimum Wages Act, 1948. A copy of the same has been produced before this Court. Admittedly, the claimant has to be treated as an unskilled employee and he comes under the category "Zone-A". Therefore, his wages should be fixed at Rs.33/- per day and the Dearness Allowance applicable on the date of accident was Rs.747.15. Thus, the compensation has to be calculated as detailed below:

Compensation = $990 [33 \times 30] \times 60 / 100 = \text{Rs.}594/-$
 $594 \times 747.15 \times 30 / 100 = \text{Rs.}1,33,142/-$

15. The learned counsel for the C.L.R.I. pointed out that the accident occurred on 05.09.1998, the claim petition was filed in the year 2006 and C.L.R.I. was not instrumental for the delay in making the claim and that, therefore they are not liable to pay interest. सत्यमेव जयते

16. Section 4-A(1) and (3) of Workmen Compensation Act, 1923 provides for payment of interest if the compensation is not paid within one month from the due date. It reads as follows: "(1) Compensation under Section 4 shall be paid as soon as it falls due. (3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall- (a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the

amount due; and (b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty: Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed."

17. The Hon'ble Supreme Court in ORIENTAL INSURANCE CO. LTD. vs. SIBY GEORGE AND OTHERS [2012 ACJ 2126] has held that "Section 4-A(3) Clause (a) makes the levy of interest, with no option, in case of default in payment of compensation." It has also been held that the compensation falls due on the date of accident and the interest starts accruing one month after the date of accident. As already noticed the delay in making the claim has been condoned and that order has attained finality. Therefore, in the light of the dictum laid down by the Hon'ble Supreme Court the contention of the C.L.R.I. that they are not liable to pay interest cannot be accepted.

18. For the reasons stated above, the appeal filed by C.L.R.I. in C.M.A.No.2535 of 2014 is dismissed. The appeal filed by the claimant in C.M.A.No.2294 of 2013 is partly allowed. The total compensation is enhanced from Rs.45,989/- to Rs.1,33,142/-. In other respects, the award is confirmed. The C.L.R.I. is directed to deposit the enhanced award amount of Rs.1,33,142/- [Rupees One Lakh Thirty Three Thousand One Hundred Forty Two only] with interest at the rate of 12% per annum and costs, less the statutory deposit, to the credit of W.C.No.38 of 2007 on the file of the Deputy Commissioner of Labour I, Chennai, within a period of six weeks from the date of receipt of a copy of this order. The claimant is permitted to withdraw the enhanced compensation amount awarded by this Court with proportionate interest less the amount already withdrawn, if any, by making necessary application before the Commissioner. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sri
To

The Deputy Commissioner of Labour I,
Chennai.

+2cc M/S.T.Ravikumar, Advocate Sr.13776, 13777
+2cc to M/S.Balan Haridas, Advocate Sr.13802, 13800

C.M.A.Nos.2294 of 2013 & 2535 of 2014

sai[co]
srg 16/03/2017



WEB COPY