

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-12-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2876 OF 2013

T.Nagajothi

... Appellant/Petitioner

-vs-

1.M.K.Ganeshram

2.National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai-600 002.

... Respondents/Respondents

Appeal under section 30 of Workmen's compensation Act 1923, against the order, dated 30.04.2013, passed in W.C.No.239 of 2010 on the file of Commissioner for Workmen's Compensation-II- cum- Deputy Commissioner of Labour-II, Chennai.

For appellant : Mr.K.Varadha Kamaraj

For respondent 1 : Mr.V.Mohan Choudary

For respondent 2 : Mr.S.Vadivel

JUDGMENT

Aggrieved over the award passed by the Commissioner for Workmen's Compensation -II (Deputy Commissioner of Labour-II), Chennai, dated 30.04.2013, the claimant-workman has preferred this appeal. According to the appellant/claimant, he was working as a Loadman under the first respondent and he suffered injuries during the course of his employment, wherein he suffered fracture in his ankle. The doctor, who was examined as W.W.2, has deposed that the claimant has suffered 55% partial permanent disability. On the basis of the disability certificate issued by the doctor, the authority has fixed the loss of earning capacity of the claimant at 50% and computed the compensation. According to the appellant, even though the physical disability was assessed at 55%, his functional disability is 100%, as he is precluded from working as Loadman. In a similar circumstance, according to him, this Court, in D.Shanmuga Anand v. M.Balasubramanian, 2012 (1) TNMAC 216, has held that the injured is entitled to 100% loss of earning capacity. According to the learned counsel for the appellant, in the case of the

appellant on hand also, he has suffered 100% functional disability and, therefore, the award passed by the authority needs interference.

2. Per contra, learned counsel appearing for the second respondent would contend that the injury suffered by the appellant is not a total disablement, but, it is only a partial permanent disablement. Even as per the schedule, 50% disability is awarded in case of amputation of legs, whereas, in the instant case, the appellant has suffered only a partial permanent disability and not total permanent disability, in which case, the compensation awarded by the authority below itself is in excess and, therefore, the appellant is not entitled to assessment of 100% loss of earning capacity.

3. Heard both sides.

4. On perusal of the material available on record, it is seen that the appellant has suffered injuries in his ankle. The discharge summary does not disclose grievous injuries, but would disclose treatment for fracture in malleable bone in the right leg. The case relied on by the appellant also discusses about the total disablement suffered by a driver. In cases of expertise in trades, if precluded from continuing the avocation in specific trade due to total disablement, functional disability is taken as 100% and compensation shall be computed on the basis of functional disability. But, the case on hand is not the one of total disablement, but, it is only a partial permanent disablement. Further, in the judgment relied upon by the appellant, the doctor, who issued the medical certificate, was not examined to prove the percentage of disability. It is also not the case of the appellant herein that he has suffered total permanent disablement and he is deprived of earning capacity at all. Therefore, the ratio laid down by the Supreme Court in Pal Raj v. Divisional Controller, NEKRTC, 2011 (2) LLN 6 (SC), which is to the effect that while computing compensation for disabilities being suffered by a workman in the course of his employment, the percentage of functional disability resulting in loss of earning capacity is the criterion and the compensation has to be assessed proportionate to the loss of earning capacity, permanently caused by the injury, will squarely apply to this case.

5. The appellant is neither totally disabled nor is he totally deprived of his earning capacity. He can earn his living, functioning other than a loadman. In such circumstances, as assessed by the doctor, the disability can be fixed 55% and finding of the authority under the Workmen's Compensation Act, fixing his disability at 50%, is not erroneous. Further, the doctor, who was examined on the side of

the claimant himself, would state that there can be 5% variation in the assessment of disability. Considering the evidence let in by the doctor, the authority has rightly fixed the disability at 50% and, therefore, this Court does not find any illegality or irregularity in the computation of compensation.

6. In so far as the award of interest is concerned, the authority has directed the second respondent to deposit the award amount within a period of 30 days and, in default, the appellant is entitled to interest at the rate of 12% per annum. However, as per Section 4-A of the Workmen's Compensation Act, interest falls due after 30 days of the accident and the claimant is entitled to the same from 31st day of the accident. The Hon'ble Supreme Court, in Pratap Narain Singh Deo v. Shrinivas Sabata and another, 1976 (1) SCC 289 = 1976 ACJ 141, has clearly held that claimants under the Workmen's Compensation Act are entitled to interest on completion of one month from the date of accident and not from the date of adjudication. Therefore, the appellant is entitled to interest from 31st day of the accident i.e., to say, from 19.10.2009 till the date of deposit. The second respondent is directed to deposit interest from 19.10.2009 till the date of deposit at the rate of 12% per annum within a period of four weeks from the date of receipt of a copy of this order.

7. Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

dixit

To

The Commissioner for Workmen's Compensation-II-
cum- Deputy Commissioner of Labour-II,
Chennai.

+1cc to Mr.S.Vadivel, Advocate SR.No.87096
+1cc to Mr.V.Mohan Choudary, Advocate SR.No.87002
+1cc to MR.K.Varadhakamaraj, Advocate SR.No.87184 (22/01/2018)

C.M.A.No.2876 OF 2013

VGII (CO)
GN (28/12/2017)