

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.3474 of 2008

and

MP.No.1 of 2008

The Special Officer,
Tiruchengode Agricultural Producers
Co-operative Marketing Society Ltd.,
Vellore Road, Tiruchengode,
Namakkal. Appellant/1st Respondent

Vs.

1.Gunasekaran1st Respondent/Petitioner

2.United India Insurance Company Ltd.,
146N, Kumar Complex,
Tiruchengode - 637 211. 2nd Respondent/2nd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923 against the award passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Salem in W.C.No.252 of 2006 dated 31.10.2007.

For Appellant :Mr.M.S.Palaniswamy

For Respondents :Mr.K.Nagarajan [for R1]

Mr.T.Ravichandran [for R2]

JUDGMENT

This appeal is preferred by the employer of the claimant challenging the order passed by the Commissioner under the Workmen Compensation Act in W.C.No.252 on the file of Court of Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Salem.

2. The claimant/first respondent is a driver under the appellant and on 04.2.2006, while he was driving the official jeep belonging to the appellant carrying three of its officers, it met with an accident, owing to which all the four who were travelling in the jeep then suffered injuries. For the injuries suffered by the officers, they preferred separate complaint under Motor Vehicles Act. So far as the driver is concerned, he moved the Commissioner, Workmen Compensation, seeking compensation. The major injuries suffered by the claimant in the said accident was fractures to femur bone, below his knee, right wrist and right hip bone. Whereas his disability was assessed by the doctor at 75%, the Commissioner had fixed it at 50% and determined the compensation amount payable at Rs.2,03,328/-.

However in ordering it, the Commissioner has exonerated the insurance company from meeting the liability. This is now under challenge before this Court.

3. The learned counsel for the appellant submitted that policy covers under the Workmen Compensation Act for the driver and this fact is not disputed by the counsel for the Insurance Company /second respondent. However both the appellant as well as its insurer/second respondent submitted in unison that the complainant is still employed in service and that he continues to be in the employ of the appellant and presently he is drawing a salary of Rs.37,345/- per month. The learned counsel prayed for the indulgence of the Court to rework the compensation on loss of earning capacity, since the complainant has not lost anything on that score.

4. After carefully considering the rival submissions, it is appropriate to determine the liability at 40% and accordingly compensation awarded on the head of loss of earning capacity is reduced to Rs.1,62,662/-. The insurance company is directed to deposit the compensation amount of Rs.1,62,662/- determined by this Court within one month from the date of receipt of a copy of this order, failing which it shall be liable to pay the interest at 12% per annum. In the eventuality of the insurance company depositing the award amount, the appellant will be free to withdraw the entire award amount deposited by it. Accordingly, this appeal is disposed of without costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour)
Salem.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.M.S.Palanisamy, advocate,sr.1304
+1 cc to Mr.K.Nagarajan,advocate,sr.6651
+1 cc to Mr.T.T.Ravichandran,advocate,sr.6591.

rsy(co)
krd 3/3

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