

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2148 OF 2006

G.Kannan

... Appellant/Applicant

Vs.

1. The Regional Engineer
L & T / E.C.C. / P.S.C.P.,
Ramireddipatti,
Tharamangalam.
2. The Branch Manager
The New India Assurance Company Ltd.,
Branch Gugai,
Salem.
3. P.Jayaraman
Engineering Contractor
153, Bazaar Street,
Namagiripettai, Namakkal.

... Respondents/Opposite
parties

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the award dated 15.05.2006 made in W.C.No.544 of 2004 on the file of the Commissioner for Workmen's Compensation, Salem and award compensation to the claimants / appellants herein as prayed for in the original claim at Rs.1,00,000/- with interest thereon.

For Appellant : Mr.P.Jagadeesan
For Respondent-2 : Mr.M.Krishnamoorthy

WEB COPY
J U D G M E N T

The appellant is the claimant. The appellant filed the above appeal against the dismissal of the claim petition filed before the Commissioner for Workmen's Compensation, Salem.

2. The case of the appellant is that while he was in employment on 16.12.2003 in the first respondent company, he met

with an accident, in which his middle finger and ring finger of his right hand got injured. He was taken to Sri Chellappa Hospital, Salem, where his middle finger was amputated. Due to that accident, he suffered permanent disability and made a claim of Rs.1,00,000/- towards loss of earning capacity. The appellant was drawing a sum of Rs.2,300/- per month at the time of accident and the first respondent is covered by insurance of the second respondent.

3. The second respondent insurance company has denied all the allegations and had contested that the claim petition is not maintainable and the appellant / claimant is not entitled to any compensation.

4. The authority below has considered the evidence and the appellant let in evidence through P.W.1 and P.W.2 and the six documents were marked on behalf of the appellant as Exs.P1 to P6. Fitness certificate was marked as a document and no evidence was let in on the side of the respondent. The authority after going through the documents, has found that since the claimant has joined duty and continued to earn salary, he is not entitled to compensation for loss of earning capacity. Aggrieved over the same, the appellant is before this Court.

5. The learned counsel for the appellant would submit that Exs.P1 and P4 are the medical certificates issued by the Hospital. Exs.P2 and P3 are the certificates issued by the employer. Ex.P6 is the disability certificate. There is no dispute over the accident and the disability suffered by the claimant. As per the Employee's Compensation Act, 1923, the claimant is entitled to compensation for the permanent injuries suffered by him. It is proved through P.W.2 - Doctor that the appellant's middle finger was amputated and the ring finger has become immobile and due to that his efficiency to work has reduced. Ex.P6 is the disability certificate which shows the disability as 20% permanent disability. Only because the claimant has joined duty, it cannot be construed that he has not suffered any permanent disability and there is no loss of earning capacity. Admittedly, when the claimant has lost his middle finger and crush injury on his ring finger, it is obvious that the efficiency to do work certainly will go down. In that event, the authority under Workmen's Compensation Act, ought to have awarded compensation for the disability suffered by the claimant.

6. As per Section 4(1) (c) (ii) of the Employee's Compensation Act, 1923, in the case of an injury not specified in Schedule I, such percentage of compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified Medical

Practitioner) permanently caused by the injury, compensation shall be given. As per Schedule-II, for loss of two phalanges, 9% disablement is specified. As per Schedule-IV the factors for working out lump sum equivalent of compensation amount in case of permanent disablement and death is specified.

7. In the case on hand, the appellant is 32 years old and the factor for 32 years is 203.85. Applying the percentage of disablement and the factor, the compensation works out to Rs.23,318.17. As per Section 4-A of the Employee's Compensation Act, 1923, the claimant is entitled to interest when his claims fall due. According to which, after 30 days of the accident, interest will start accruing on the compensation to which he is entitled. The accident had taken place on 16.12.2003. The claimant is entitled to compensation with effect from 16.01.2004. Accordingly, the interest amount for 165 months @ 12% per annum is arrived at Rs.41,778/-. Thus, the appellant is entitled to a sum of Rs.25,320/- towards compensation and Rs.41,778/- towards interest over the compensation totaling to a sum of Rs.67,098/-. Now, this amount of compensation is calculated on the basis of two phalanges of the middle finger alone. Whereas the learned counsel for the appellant vehemently contended that for the crush injury of the right finger, no compensation was awarded.

8. Considering the submissions made, this Court is of the opinion that some compensation should be awarded for the crush injury of the right finger. But there is no evidence to substantiate the same. But in view of Ex.P6 - disability certificate, this Court in the interest of justice awards a sum of Rs.3,000/- towards the injuries suffered to the ring finger. Thus, the total compensation is arrived at Rs.70,000/-.

9. Accordingly, the Civil Miscellaneous Appeal is allowed with a direction to the second respondent insurance company to deposit the entire amount of compensation, along with interest, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Branch Manager
The New India Assurance Company Ltd.,
Branch Gugai,
Salem.
2. The Commissioner for Workmen's Compensation
Salem.

+lcc to Mr.M.Krishnamoorthy, Advocate, S.R.No.72965
+lcc to Mr.P.Jagadeesan, Advocate, S.R.No.73190

C.M.A.NO.2148 OF 2006

sj (co)
cs/29/01/18



WEB COPY