

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.03.2017

C O R A M

The Honourable **Mr.Justice S.Manikumar**  
and

The Honourable **Mr.Justice M.Govindaraj**

Civil Miscellaneous Appeal No.1018 of 2017  
and  
C.M.P.No.4970 of 2017

The United India Insurance Co. Ltd.  
#38, Anna Salai  
Chennai - 600 002

... Appellant

Vs

1.Muthaiyan

2.J.Saravanan

...Respondents

\*\*\*

Prayer: Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the judgment and decree dated 09.06.2004, passed in W.C.No.153 of 2003, by the Commissioner for Workmen's Compensation - I, (Deputy Commissioner of Labour - I), Chennai - 600 006

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For Appellant : Mr.C.Ramesh Babu

J U D G M E N T  
(Made by S.Manikumar,J)

Challenge in this appeal is to the decision of the Tribunal fastening liability on the appellant/Insurance Company to compensate the first respondent, who sustained a fracture and dislocation of left leg knee and other bodily injuries, in the accident which took place on 31.12.2000. The first respondent has made a claim before the Commissioner for Workmen's Compensation - I (Deputy Commissioner of Labour - I), Chennai, seeking compensation of Rs.5,00,000/-. Having regard to the nature of injuries sustained and the disability assessed, the Deputy Commissioner of Labour - I, Chennai awarded a sum of Rs.2,44,620/- to the injured/claimant, vide order dated 09.06.2004.

2. Short facts leading to the appeal are that on 31.12.2000, when Muthaiyan/the first respondent herein, while driving a van bearing Registration No.TN-32 Y-5119, belonging to the second respondent and insured with the appellant/insurance company, from Marakkanam to Chennai, near Palier Madam turning, met with an accident, involving a Government Transport Bus bearing Registration No.TN 21 N-0465 and in the said accident, he sustained severe injuries, and was admitted in Government

General Hospital, Pondicherry from 31.12.2000 to 03.01.2001. He sustained fracture of tibia and dislocation in the left knee and injury on the right knee, and multiple tissue injuries.

3. Material on record discloses that, at the time of accident, the first respondent was 32 years and that, he sustained injuries during his employment, under the second respondent. He claimed to have earned Rs.4,500/- per month, besides Rs.20/- as daily batta. The appellant is the insurer of the van, involved in the accident. The first respondent/injured has filed a claim petition, against the employer and insurer claiming compensation of Rs.5,00,000/-.

4. Before the Commissioner of Labour, Chennai, the second respondent herein/owner of the van, filed a counter affidavit admitting employment of the first respondent with him, as driver and that he paid a sum of Rs.4,500/- per month alone, as salary. He has denied payment of batta to the first respondent. He has stated that, at the time of accident, the vehicle was insured with the appellant/insurance company and hence the appellant/insurance company is liable to pay compensation to the injured/first respondent.

5. In the counter affidavit filed before the Deputy Commissioner of Labour-I, Chennai, appellant/insurance company has denied the avocation and income of the first respondent/injured. Appellant/insurance company, has denied employer-employee relationship between the first respondent and the second respondent. Further, the insurance company submitted that, at the time of accident, the first respondent did not possess a valid and effective driving licence, and for the above said reasons prayed for dismissal of the claim petition.

6. Before the Deputy Commissioner of Labour, Chennai, claimant examined himself as C.W.1. Exhibits P.1-Discharge summary, Ex.P2 - Private hospital record, Ex.P3-FIR, Ex.P4-Driving Licence, Ex.P5 - Disability certificate issued by PW2-Dr.J.R.R.Thyagarajan, Ex.P6 - X-Ray and Ex.P7 - Copy of insurance policy have been marked to substantiate his claim. On behalf of the second respondent and insurance company, no oral or documentary evidence was adduced.

7. On evaluation of pleadings and evidence, the Deputy Commissioner of Labour, found that the first respondent/claimant sustained injuries during the course of his employment. On the basis of the evidence adduced that the first respondent sustained

fracture and dislocation in the left leg knee, left leg tibia and right knee, and other multiple tissue injuries; that the injured could fold his leg only up to 80 degrees, difficult for him to drive the vehicle, and taking note of Ex.P5 - disability certificate, the Deputy Commissioner of Labour determined the loss of earning capacity as 50%. At the time of accident, the claimant/first respondent was aged 32 years and applying the relevant factor, the Deputy Commissioner of Labour awarded compensation of Rs.2,44,620/- with statutory interest.

8. Aggrieved over the liability and quantum of compensation, insurance company has preferred this appeal on the following questions of law:

*i) Whether the Learned Commissioner for Workmen's Compensation - I was justified in assessing the loss of earning capacity to the extent of 50% in the absence of any certificate towards the same issued by any qualified Medical Practitioner even though PW2 has assessed the Physical deformity to the extent of 50% for which, a certificate was no doubt issued in favour of the first respondent herein?*

*ii) Whether the Learned Commissioner for Workmen's Compensation - I, has invoked the provisions of Section 4(1)(c)(ii) read with explanation II of W.C. Act 1923 and followed the*

*provisions of Section 20(3) of the said Act to compute the compensation payable to the first respondent herein especially injuries suffered by him were not schedule injuries?*

*iii) Whether the compensation awarded by the Learned Commissioner for Workmen's Compensation - I, to a sum of Rs.2,44,620/- in favour of the first respondent herein is sustainable in law especially the first respondent herein did not suffer any bone fracture even according to the evidence of PW2 an expert who was examined as a witness on his side who deposed that there was a crack in the tibia bone just above the knee of left leg?*

*iv) Whether the learned Commissioner for Workmen's Compensation - I, has jurisdiction to award any compensation together with penal interest at the rate of 12% per annum from the date of accident against the appellant herein in the event of any default on the part of the appellant herein in depositing the award amount within the stipulated period as such ordered by him?*

Heard the learned counsel for the parties.

9. Material on record discloses that, employer and employee relationship has been admitted by respondent No.2 herein. Accident which occurred on 31.12.2000 is also admitted by the employer, whereas, United India Insurance Co. Ltd., Chennai, appellant

herein/second opposite party, has denied the above. Before the Deputy Commissioner of Labour-I, Chennai, appellant has denied the nature of injuries alleged to have been sustained by respondent No.1 and the consequential disablement. Loss of earning due to disablement has been denied. Further contention has been made that respondent No.1, did not possess a valid and effective driving licence, to drive the van bearing Registration No.TN-32 Y-5119, owned by respondent No.2 and therefore, liability should not be fastened.

10. To support the plea that there was accident on 31.12.2000, Ex.P3-FIR has been marked. To support the contention that respondent No.1 suffered grievous injuries and he took treatment in Pondicherry Government Hospital, Ex.P1-Discharge Summary, has been marked. No oral evidence has been adduced. Thus, after considering the substantive evidence adduced, the Deputy Commissioner of Labour-I, Chennai, arrived at a conclusion that respondent No.1 sustained injuries on account of the accident, during the course of employment under the second respondent.

11. Nature of injuries sustained by respondent No.1, has been proved by marking Ex.P1-Discharge summary issued by Government General Hospital, Pondicherry, Ex.P2-Hospital record

from a private hospital and Ex.P6-X-Ray. Supporting the above, oral testimony has been adduced by respondent No.1 and PW2- Dr.J.R.R.Thiyagarajan, who has deposed that when he examined respondent No.1 on 10.02.2004 with reference to the medical records, he found that respondent No.1 had sustained dislocation of left leg knee and a crack in tibia bone, just above the knee, there was restriction of movement in the left knee and that there was physical deformity. Ex.P6-X-ray has been taken. He has assessed the extent of functional disablement as 50% and issued Ex.P5- Disability certificate.

12. Going through the oral and documentary evidence and taking note of the avocation of respondent No.1, driver, the Deputy Commissioner of Labour-I, Chennai, held that such functional disability would affect the loss of earning capacity. Though in this appeal, contention has been made that the Deputy Commissioner of Labour Workmen Compensation-I, ought to have referred the first respondent to the Medical Board for ascertaining the percentage of loss of earning capacity, as per Section 20(3) of the Workmen's Compensation Act, 1923, this court is not inclined to accept the said contention, in light of a Full Bench decision of Madhya Pradesh High Court in **Kaluram Rathore v. Neelam Chand Kirar** reported in **2004 (2) TNMAC 16 (FB) (MP)**, a Full

Bench of the Madhya Pradesh High Court, has held as follows:

"10. Schedule I of the Workmen's Compensation Act relates to injuries under Sections 2(1) and 4 of the Workmen's Compensation Act. Schedule I, Part I relates to 100 percent loss of earning capacity in the cases of permanent total disablement. Part II relates to injuries deemed to result in permanent partial disablement. In the Schedule, 48 types of injuries causing permanent and partial disablement pertaining to different parts of body are mentioned. Note is appended below the schedule which mentions that complete and permanent loss of the use of any limb or member referred to in this schedule shall be deemed to be the equivalent to the loss of that limb or member. Note is clear where there is permanent loss of use of limb, disability will be 100 percent and the injuries of permanent loss of those limbs which fall in Part I of the schedule. However, percentage of loss shall not be higher than what has been mentioned in Part II regarding partial disablement. In the cases of complete and partial loss of use of any limb or member, it will amount to loss of use of that limb or member. **Thus, the Legislature's intent is clear and Court should determine percentage of loss of earning capacity from the nature of injuries mentioned in the Schedule. Even otherwise, doctor's statement determining the loss of disability should be based upon**

scientific tests. If no scientific tests are conducted, then the Court may safely record the percentage of disability from Schedule I of the Workmen's Compensation Act. Percentage of loss determined in the Schedule of Workmen's Compensation Act will be sufficient to determine the nature of disability and amount of compensation can be calculated by applying the multiplier mentioned in the Schedule under Section 163A of the Act. It may be mentioned that mere fracture of bones and its re-union will not amount to permanent total disablement or permanent partial disablement, unless the doctor has examined the claimant and assessed the percentage of disability after performing scientific tests. Without performing scientific tests bald statement of the doctor and certificate is inadmissible in evidence. Visual opinion of doctor has no evidentiary value. Claims Tribunals, therefore, must assign reasons in arriving at the conclusion about the percentage of loss of income in the case of permanent partial disablement. Therefore, for determining the nature of permanent disability, there must be sufficient evidence on record to determine total or partial disablement. In the absence of evidence regarding scientific tests to determine the percentage of disability, Claims Tribunals should take guidance from the

**Schedule of Workmen's Compensation Act to determine the percentage of loss and shall apply multiplier on the basis of loss of income of the injured."**

**(emphasis supplied)**

13. Having regard to the testimony of RW2, owner of the van bearing Registration No.TN-32 Y-5119, that the first respondent was employed as driver and though paid a sum of Rs.4,500/- per month as salary, the Deputy Commissioner of Labour-I, Chennai, has fixed the monthly income only as Rs.4,000/-. At the time of accident, the injured/respondent No.1, was aged 32 years and therefore, by applying structured formula as per Workmen's Compensation Act, 1923, the Deputy Commissioner of Labour-I, Chennai, has arrived the compensation as here under:

|                          |                                                    |
|--------------------------|----------------------------------------------------|
| Age                      | : 32                                               |
| Factor                   | : 203.85                                           |
| Monthly salary           | : Rs.4,000/-                                       |
| Loss of earning capacity | : 50%                                              |
| Compensation             | : $60/100 \times 203.85 \times 4000 \times 30/100$ |

: Rs.2,44,620/-

14. Going through the award in entirety, we do not find that the appellant/insurance company, has made out a case for

reversal. All substantial questions of law raised, are answered in the negative against the appellant/United India Insurance Co. Ltd. Compensation amount, is stated to have been deposited.

In the result, the civil miscellaneous appeal is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

(S.M.K.,J) (M.G.R.,J)  
03.03.2017

Index : Yes/No  
website : Yes/No.  
ASR

To

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

S.MANIKUMAR,J

a n d

M.GOVINDARAJ,J

asr.

C.M.A.No.1018 of 2017

and

C.M.P.No.4970 of 2017

03/03/2017

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