



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1371 of 2016

Manikandaprabu

... Appellant/Petitioner

Vs.

1. Punitha Rosy

2. The Divisional Manager,
New India Assurance Company Ltd.,
No.85/B, Market Road,
East Gate,
Thanjavur Town,
Thanjavur District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30(1) of the Workmen Compensation Act, 1923, against the Judgment and Decree passed on 21.03.2016 in W.C.No.153 of 2014, on the file of the Deputy Commissioner of Labour, Trichirappalli.

For Appellant : Mr.G.Karnan

For R-1 : No appearance

For R-2 : Mr.S.Sarvagan Prabhu

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award dated 21.03.2016 in W.C.No.153 of 2014, on the file of the Deputy Commissioner of Labour, Trichirappalli.

2.The bus bearing Registration No.TN-49-AK-5558, which involved in the accident, absolutely belongs to the first respondent and the same has been insured with the second respondent and on 21.06.2014 the same has been driven by the appellant and subsequently the lorry bearing Registration No.TN-01-AF-2014 dashed against the bus and due to that, the claimant sustained multiple injuries all over his body.

3.The claimant filed W.C.No.153 of 2014 before the learned Deputy Commissioner of Labour, Trichirappalli, claiming a sum of Rs.25,00,000/- as compensation for the grievous injuries sustained by him in an accident occurred during the course of his employment



under the first respondent.

4. In the counter affidavit, it is stated that there is no relationship of employer and employee amongst the first respondent and claimant. There is no merit in the petition and the same deserves to be dismissed.

5. On the basis of the available evidence on record, the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tiruchirappalli has awarded a sum of Rs.12,07,772/-. Against the award passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tiruchirappalli, the present Civil Miscellaneous Appeal has been preferred at the instance of the claimant as appellant.

6. The learned counsel appearing for the appellant/claimant has attacked the impugned award passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tiruchirappalli on the ground that the Commissioner has erroneously left a sum of Rs.2,02,667/- in medical expenditure without considering the medical bills and the Commissioner ought to have taken disability at 100% instead of 85% since the loss of avocation is to be considered.

7. Per contra the learned counsel appearing for the second respondent/Insurance Company has contended that after considering the available evidence on record, the Commissioner has passed the award and therefore the contentions put forth on the side of the appellant are liable to be rejected.

8. Considering the submissions and on perusing the records, this Court is inclined to take the disability at 100% since the claimant was working as Driver at the time of accident and he could not work thereafter. Further, in view of the fact the claimant has produced medical bills, the amount shall be granted as per the Bills.

9. If disability is fixed at 100%, the compensation under the head of loss of income would come to $(60/100 \times 8000 \times 218.47) = \text{Rs.}10,48,656/-$. As per medical bills produced, Rs.5,19,081/- would be granted. Totally, a sum of Rs.15,67,737/- is awarded to the claimant.

10. The learned counsel for the appellant would further submit that the Commissioner ought to have ordered interest to be paid from the date of accident. In support of his submission, he would rely on the judgment, wherein it has been held as follows:

20. The Division Bench of this Court in the Judgment reported in N.Ganesan v. Thilagavathi, 2010 (2) TNMAC 89, following the decision of the Honourable Apex Court reported in Pratap Narain Singh Do v. Shrinivas Sabata,



1976 ACJ 141; and Kerala State Electricity Board v. Valsala, K., 2000 (1) CTC 563 (SC): 2000 ACJ 5, held that the word "falls due" occurring under Section 4-A of the Workmen's Compensation Act means that interest for Compensation amount would accrue 30 days after the date of accident and not from the date of quantification/Orders passed by the commissioner for Workmen's Compensation. Therefore, the direction of Deputy Commissioner of Labour-II to pay interest only if the amount is not deposited within 30 days from the date of order is unsustainable. So is the argument of the learned Counsel for the Appellant that the Appellant is entitled to interest from the date of accident. The Appellant is entitled to interest from the 31st day of the accident i.e., from 21.02.2009.

21. In the result, the Civil Miscellaneous Appeal is allowed. The order of the Deputy Commissioner of Labour-II is modified to the effect that the disability has resulted in 100% loss in earning capacity and hence, the Compensation of Rs.5,31,288/- is to be paid to the Appellant along with interest @ 12% per annum from 21.02.2009 after deducting the amount already paid. The second respondent is directed to pay the arrears with interest within a period of four weeks from the date of receipt of a copy of Judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the award dated 21.03.2016 in W.C.No.153 of 2014, on the file of the Deputy Commissioner of Labour, Trichy, is modified. Total compensation is enhanced to Rs.15,67,737/- from the amount of Rs.12,07,772/-. The second respondent/ Insurance Company is directed to deposit the entire enhanced award amount, with interest at the rate of 12% from the date of accident, within a period of six weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimant is permitted to withdraw the same, with accrued interests and costs. No Costs. Consequently, connected Miscellaneous Petition is closed. The court fee for additional enhanced amount shall be paid within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar



To

The Deputy Commissioner of Labour,
Trichy.

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Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.G.KARNAN, ADVOCATE IN SR No. 68878
+ 1 CC TO Mr.D.SELVARAJ, ADVOCATE IN SR No. 69250

CM

TE/JC/SAR-I : 04/09/2017 : 4P/5C

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