



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.392 of 2016

and

C.M.P.(MD)No.5450 of 2016

The Branch Manager,
National Insurance Company Limited,
No.33, Promenade Road,
Cantonment, Trichy.

... Appellant/2nd Respondent

Vs.

1.Syed Mansoor Husain

...1st Respondent/Petitioner

2.Mohammed Ibrahim

... 2nd Respondent/1st Respondent

Prayer: Appeal is filed under Section 30 of Workmen Compensation Act, against the award dated 02.01.2015 (Which was received by the appellant Insurance Company on 19.03.2015) made in W.C.No.47 of 2014 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Trichirappalli.

For Appellant	: Mr.J.S.Murali
For R1	: Mr.N.Sudhagar Nagaraj
For R2	: No Appearance.

JUDGMENT

The insurer has filed this appeal questioning the award passed by the Deputy Commissioner of Labour, Trichirappalli in W.C.No.47 of 2014 both on the grounds of liability as well as quantum.

2.The first respondent herein was working as a driver in the car owned by the second respondent herein. The car was insured with the appellant Insurance Company. When the first respondent was driving the second respondent's car on 25.12.2013, during the course of his employment, the car got involved in an accident with another car. But the claimant did not lodge First Information Report immediately. That was registered only three days later. He also did not take steps to proceed against the driver of the other



vehicle. He chose to lodge a claim under the provisions of the Employee's Workmen Compensation Act by making his employer and the insurance Company as respondents.

3. The appellant insurance company opposed the said claim on the ground that there was no employer and employee relationship between the insured and the claimant. But, the Commissioner of Workmen Compensation came to the conclusion that the employer and employee relationship was established and that the accident in question arose during the course of employment. This is a pure finding of fact. The conclusion of the Commissioner of Workmen Compensation cannot be said to be perverse. This Court, therefore, sees no ground to interfere with the said findings. The claimant had suffered a fracture on the ankle. The doctor has given a certificate assessing the disability at 40%. P.W.2 admittedly did not treat the claimant. The Commissioner of Workmen Compensation came to the conclusion that there would be 30% impact on the earning capacity. However, there is no basis for arriving such conclusion.

4. Therefore, this Court is of the view that this can be further reduced to 25%. If the impact on the earning capacity is taken as 25%, the compensation payable to the claimant will be quantified at Rs.2,57,620/-. An additional substantial question of law was framed during the course of hearing as to whether the percentage of the disability fixed as 30% can be said to be proper. This substantial question of law is answered in favour of the appellant.

5. Accordingly this appeal is partly allowed. The award dated 02.01.2015 in W.C.No.47 of 2014 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Trichirappalli is modified and the appellant is directed to pay a sum of Rs. 2,57,620/- with interest at the rate of 12% per annum with costs, from 30 days after the date of accident, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the same, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal. No costs. Consequently, the connected C.M.P.(MD)No.5450 of 2016 is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

1. Commissioner for Workmen Compensation,
(Deputy Commissioner of Labour),
Trichirappalli.

2. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to Mr.J.S.MURALI, Advocate in SR.No.88135

SKM

RJ/PN/SAR-3/25/07/2018 - 3P/5C

C.M.A. (MD) No.392 of 2016
and
C.M.P. (MD) No.5450 of 2016
17.11.2017