



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

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C.M.A. (MD) Nos.452 & 1299 of 2016
and CMP. (MD) No.5942 of 2016

In CMA. (MD) No.452 of 2016:

The Branch Manager,
New India Assurance Company Limited,
83, TSR, Periya Theru,
Kumbakonam- 612 001.
Thanjavur District.

..Appellant/2nd Respondent

Vs.

1.Abulnabil
2. Iliyas

.. Petitioner
.. 2nd Respondent/1st Respondent

Prayer: The appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the Order dated 03.07.2015, passed in W.C.No.166 of 2014, on the file of the Employees Compensation Commissioner of Labour, Tiruchirappalli and set aside the same.

For Appellant : Mr.G.Prabhu Rajadurai
For R1 : Mr.G.Karnan

In CMA. (MD) No.1299 of 2016:

Abulnabil

...Appellant/Claimant

Vs.

1.Iliyas

2.The Branch Manager,
New India Assurance Company Limited,
83, TSR, Periya Theru,
Kumbakonam- 612 001.
Thanjavur District.

... Respondents/Respondents

Prayer: The appeal filed under Section 30 (1) of the Workmen's Compensation Act, 1923, to allow the appeal and modify the order dated 03.07.2015 passed in W.C.No.166 of 2014 on the file of the Workmen's Compensation Commissioner (Deputy Commissioner of Labour) Trichy by enhancing the award amount by Rs.4,00,000/- to the Appellant with Proportionate interest.

For Appellant : Mr.G.Karnan



For R1 : No Appearance
For R 2 : Mr.G.Prabh Rajadurai

COMMON JUDGMENT

WEB COPY The Civil Miscellaneous Appeal in C.M.A.(MD)No.452 of 2016 has been filed by the appellant/Insurance Company against the award, dated 03.07.2015 passed in W.C.No.166 of 2014 on the file of the Workmen's Compensation Commissioner (Deputy Commissioner of Labour) Trichy. Similarly, the Civil Miscellaneous Appeal in CMA.(MD).No.1299 of 2016 has been filed by the claimant against the award, dated 03.07.2015 passed in W.C.No.166 of 2014 on the file of the Workmen's Compensation Commissioner (Deputy Commissioner of Labour) Trichy.

2. Since the issue involved in both the Civil Miscellaneous Appeal are one and the same, they are taken up together and decided by this common judgment.

3. The claimant filed W.C.No.166 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 owner of the vehicle. 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.11,28,537/-. Aggrieved over the same, the insurance Company has preferred C.M.A.(MD).No.452 of 2016 questioning the liability and the claimant has preferred an appeal C.M.A.(MD).No.1299 of 2016 praying for enhancement of compensation awarded by the Court below.

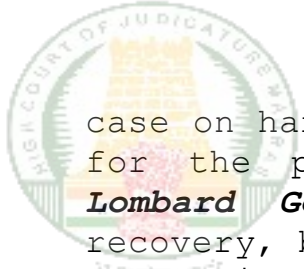
4. At the time of admission in C.M.A(MD)No.452 of 2016 filed by the New India Assurance Company, the following substantial question of law has been framed by this Court for consideration:-

"Whether Workmen Compensation Commissioner is correct in law in directing the insurer to pay the compensation though it was established that the driver/workman did not have a valid driving license to drive the Auto on the date of accident?"

Similarly, at the time of admission in C.M.A(MD) No.1299 of 2016 filed by the claimant, the following substantial question of law has been framed for consideration:

"Whether the Commissioner has awarded the compensation by following the principles of Section 4 of the Workmen Compensation Act?"

<https://hcservices.ecourts.gov.in/hcservices/> learned Counsel appearing for the Insurance Company would submit that though the driver did not have badge to drive the auto, the Tribunal has awarded compensation. Further, in the



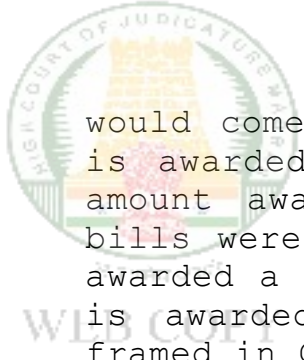
case on hand, though accepted the argument of the learned counsel for the petitioner by relying upon **2014(1) TNMAC 429, ICICI Lombard General Insurance Company Vs Kannusamy** for pay and recovery, but, failed to order the same. In support of his contention, he also relied on the judgment of the Hon'ble Supreme Court reported in **2008(1) TN MAC 294 (SC) in Sardari & Others Vs. Sushil Kumar & Others**, wherein, it has been held as follows:

6. Although, in terms of a contract of insurance, which is in the realm of private law domain having regard to the object for which Sections 147 and 149 of the Act had been enacted, the social justice doctrine as envisaged in the preamble of the Constitution of India has been given due importance. The Act however, itself provides for the cases where in the Insurance Company can avoid its liability. Avoidance of such liability would largely depend upon violation of the conditions contract of insurance. Where the breach of conditions of contract is ex-facie apparent from the records, the Court will not fasten the liability on the Insurance Company. In certain situations, however, the Court while fastening the liability on the owner of the vehicle may direct the Insurance Company to pay to the claimants the awarded amount with liberty to it to recover the same from the owner."

6. In the light of the categorical pronouncement of the judgment and it is well settled law that the claimant should not suffer even after obtaining an order for compensation and the provisions relating to the award of compensation are benevolent in nature, coupled with the fact that the Hon'ble Apex Court in various Judgments have formulated the policy of "pay and recovery", this Court deems it fit to order "pay and recovery" in this case. Accordingly, the question of law framed in respect of C.M.A.(MD).No.452 of 2016 is answered as indicated above.

7. As far as the claimant's appeal is concerned, it is pointed out by the learned counsel for the claimant that due to the injuries sustained by the claimant, though he suffered 100% disability and he is vegetative condition, but, the Court below has taken 80% disability. The learned counsel has produced the photograph of the claimant before this Court and he would submit that the claimant was working as Driver and now, he is bed ridden condition and he is not able to move. He would further submit that viewing from any angle the compensation awarded by the Court below is very less.

8. This Court finds much force on the submissions made by the learned counsel for the claimant and as rightly pointed out by the claimant that though he suffered disability to the extent of 100% the Court below, without any basis, has adopted 80% only and therefore, in this regard, it warrants interference. Accordingly, if disability is taken at 100%, the amount towards loss of income



would come to Rs.9,94,464/-. Accordingly, a sum of Rs.9,94,464/- is awarded towards loss of income. In all the other heads, the amount awarded by the Commissioner is confirmed. Since medical bills were produced by the claimant, the Commissioner has rightly awarded a sum of Rs.3,32,965/-. Totally, a sum of Rs.13,27,429/- is awarded to the claimant. Accordingly, the question of law framed in C.M.A.(MD).No.1299 of 2016 is answered by this Court.

9. In the light of the above, the Insurance Company is directed to deposit the enhanced award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited and in the later stage, the Insurance Company is entitled to recover the same from the owner of the vehicle, by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in **2004(2)CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)**. On making such deposit, the claimant is at liberty to withdraw the entire award amount along with accrued interest and costs, without filing any formal application before the Court below. No costs. Consequently, connected miscellaneous petition is dismissed.

10. In the result, C.M.A.(MD).No.452 of 2016 filed by the insurance company is partly allowed. Similarly, C.M.A.(MD).No.1299 of 2016 is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To,

The Employees Compensation

Commissioner of Labour, Tiruchirappalli.

COPY TO:

The Record Keeper, V.R. Section,

Madurai Bench of Madras High Court, Madurai.

+2cc to M/S.G.KARNAN, Advocate SR.Nos.70054&70055

+1cc to M/S.G.PRABHU RAJADURAI, Advocate SR.No.70426

ssm

MAS/JC/SAR2:03.10.2017:4P-6C

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