



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.878 of 2017

R.Bhavani

... Appellant

Vs.

1. Rajendran

2. The Branch Manager,
The New India Assurance Company Ltd,
P.P.K.Complex,
T.S.No.3548/2 & 3549/1, 2,
1st Floor, South Rajaveethi,
Pudukkottai - 625 001.

... Respondents

Prayer: This Appeal is filed under Section 30 of the Workmen Compensation Act, 1923, to set aside the order dated 29.04.2016 made in WC.No.227 of 2008 passed by the Workmen Compensation Commissioner / Deputy Commissioner of Labour, Trichy.

For Appellant : Mr.R.P.Ramachanthiran

For Respondents : Mr.J.S.Murali for R2

JUDGMENT

Heard the learned counsel on either side.

2.The injured worker is on appeal before this Court. She was employed in a Coir factory belonging to the first respondent herein. She met with an accident on 16.03.2007. As a result she suffered amputation below her knee. She was earning a sum of Rs.3,000/-. The authority passed an award dated 29.04.2016 directing the insurance company to pay a sum of Rs.1,81,965/- as compensation. Aggrieved by the inadequacy of compensation, this appeal has been filed.

3.This Court admitted the appeal on the following substantial questions of law :

1.Whether the order of the learned Deputy Commissioner not awarding interest to the award amount is correct in view of the decision rendered by the Hon'ble Supreme Court of India in Oriental Insurance



Company Ltd Vs.Siby George and Others reported in (2012) 12 SCC 540.

2.Whether the order of the learned Deputy Commissioner fixing the permanent disability of the employee/petitioner at 60% without assigning any reasons and brushing aside the evidence of P.W.2 Doctor who deposed that the petitioner sustained permanent disability at 70% as per Ex.P9.

4.It has been held by the Hon'ble Supreme Court of India in the case of ***Oriental Insurance Company Ltd Vs.Siby George and Others reported in (2012) 12 SCC 540***, that interest should be awarded from 30 days after the date of accident. But, in this case, the Commissioner for Workmen Compensation has awarded interest only in the event of default in depositing the compensation amount. This is clearly incorrect. I therefore answer the first substantial question of law in favour of the appellant. The appellant will be entitled to interest from 30 days after the date of accident.

5.The appellant deposed that she was earning a sum of Rs.3000/- as monthly income. Though the income proof was not filed, the authority have accepted the said figure as such. Instead the income set out in the Minimum Wages Act was invoked, I am of the view that the appellant would have certainly earned a sum of Rs.3,000/- during the relevant time. Therefore, the compensation payable to the worker has to be reworked as $60/100 \times 3000 \times 197.06 \times 60/100 = 2,12,824.80/$. Thus, the appellant will be entitled to get a sum of Rs.2,12,825/- with interest.

6.The learned counsel would contend that since the claimant has suffered amputation and disability to the extent of 70%, the Commissioner for Workmen Compensation erred in taking the disability only at 60%. Though I am inclined to agree with the said submission, the learned counsel for the insurance company drew my attention to the Schedule I of the Act which states that in the case of amputation below knee with stump exceeding 12.70 cms. in length, the percentage of loss of earning capacity would be 50%.

7.The submission of the learned counsel for the appellant is not in consonance with the Schedule set out in the Employees Compensation Act, 1923. Therefore, the second substantial question of law framed in this appeal is answered against the claimant / appellant.

8. In the result, the award dated 29.04.2016 made in WC.No.227 of 2006 passed by the Workmen Compensation Commissioner / Deputy Commissioner of Labour, Trichy is accordingly modified. The



second respondent is directed to deposit the balance amount with interest as stated above within a period of eight weeks from the date of receipt of a copy of this order. The appellant is permitted to withdraw the entire sum, less the amount already withdrawn by her, if any, by filing proper application before the Commissioner for Workmen Compensation, Trichirappalli.

9.This civil miscellaneous appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner for Workmen Compensation, Trichirappalli.
2. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.P.Ramachanthiran, Advocate Sr.No.84594
+1cc to Mr.J.S.Murali , Advocate Sr.No.84313

SKM

VB/SV/MMS/SAR4/09/01/2018/3P/6C

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