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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.638 of 2015

P.Pandi : Appellant/Claimant

Vs.

1. Tmt.Panchavarnam

2. The Divisional Manager,
United India Insurance Company Limited,
The Divisional Office,
Jeeva Jothi Building, Salai Road,
Dindigul.

: Respondents/Respondents

Prayer: Appeal filed under Section 30 of Workman Compensation Act, 1923 against the award on respect of interest passed in W.C.No.11 of 2010 dated 22.12.2014 on the file of the Commissioner for Workman Compensation cum Deputy Commissioner for Labour, Dindigul.

For Appellant : Mr.K.Kumaravel
For Respondents : No Appearance for R.1
Mr.N.Sivakumar for R.2

JUDGMENT

The claimant has filed this civil miscellaneous appeal seeking enhancement of the compensation awarded to him vide order dated 22.12.2014 made in W.C.No.11 of 2010 on the file of the Commissioner for Workman Compensation cum Deputy Commissioner for Labour, Dindigul.

2.The appeal was admitted and the following questions of law arose for determination:-

"a.Whether this Deputy Commissioner for Labour cum Deputy Commissioner for Labour can accept the Doctor evidence for earning capacity or not?

b.Whether the claimants are entitled to get the compensation along with 12% interest or not?

<https://hcservices2.courts.gov.in/hcservices/>

c.Whether the Workman Compensation Act,1923 is provide penal interest of 12% one month from the date of accident or not?"



3.The claimant/appellant was employed as driver in the vehicle belonging to the first respondent. The vehicle was insured with the second respondent. On 08.11.2008 he was injured in an accident that arose during the course of employment. The claimant sustained multiple grievous injuries. He filed W.C.No.11 of 2010 before the Deputy Commissioner for Labour, Dindigul. The first respondent remained exparte. The second respondent/ Insurance Company however contested the claim. The Tribunal passed the award for a sum of Rs.2,39,458/-. Not satisfied with the compensation awarded, this appeal has been filed.

4.Heard the learned counsel for the parties.

5.The learned counsel appearing for the appellant pointed out that he has suffered complete functional disability. He examined Dr.R.Vijayakumaran as PW.3. Ex.P.8-Disability Certificate, Ex.P.9 X-ray Certificate and Ex.P.10 Photographs were marked in support of his contentions. The evidence of the doctor is to the effect that following the accident certain complications developed. Though the percentage of permanent disability suffered by the claimant was assessed at 37% ,there has been 100% disability in the matter of earning capacity. After agreeing with the contention that there has been 100% professional disability, the Commissioner for Workman Compensation determined his loss of earning capacity only at 60%.

6.The learned counsel appearing for the appellant relied on the decision of this Court reported in **2014 (2) TN Mac 420-R.Murali vs. R.Shyamala, KRB Transport**. In that case also, the claimant was a driver by profession. He had suffered injuries which are similar to the present case. The learned Judge of this Court held that whether disability is partial or total made no difference since loss of earning capacity as a result of accident alone is to be considered. In the present case, the authority rightly found that the claimant had suffered 100% professional disability. Therefore the computation of compensation should have been on that basis. Similarly while awarding interest, the authority has directed that the second respondent herein shall deposit the awarded amount within 30 days and in the event of failure to do so it would carry 12% simple interest. The Hon'ble Supreme Court has held that 12% with interest should be awarded from 30 days after the accident. Therefore, answering the substantial questions of law in favour of the claimant, the compensation has to be reworked and he has to be awarded a sum of Rs.3,99,096/-.

7.Therefore, the compensation awarded by the Deputy Commissioner for Labour, Dindugul is enhanced from Rs.2,39,458/- to Rs.3,99,096/-. The second respondent/Insurance Company is directed to pay the said award amount at 12% per annum, after 30 days from the date of accident, within a period of twelve weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. The claimant is permitted to withdraw the entire



amount, less the amount already withdrawn by him, if any. W.C.No.11 of 2010 dated 22.12.2014 on the file of the Commissioner for Workman Compensation cum Deputy Commissioner for Labour, Dindigul is modified accordingly. This Civil Miscellaneous Appeal stands allowed. No costs.

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Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner for Workman Compensation cum Deputy Commissioner for Labour, Dindigul.
2. The Record Keeper, Vernacular Section, Madurai Bench of Madras High Court, Madurai.
3. Tmt.Panchavarnam,
W/o.P.Pandi,
Keelapoolanthaputsm,
3rd Street, Chinnamanur Post,
Uthamapalayam Taluk,
Theni District.

+ 1 CC TO Mr.K.KUMARAVEL, ADVOCATE IN SR No. 83656

+ 1 CC TO Mr.N.SIVAKUMAR, ADVOCATE IN SR No. 84046

TSG

TE/GT/SAR-I : 09/11/2017 : 3P/6C

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