



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2017

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No. 644 of 2015

and

M.P. (MD) No. 1 of 2015

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Race Course Road, Madurai.
2. The Assistant Engineer,
Tamil Nadu Electricity Board,
Narasingampatti,
Melur Taluk, Madurai. ... Appellants/Respondents

Vs.

A.Kannan ... Respondent/Petitioner

Prayer: Appeal filed under Section 30 of Workmen Compensation Act, to set aside the order dated 24.02.2015 passed in W.C.No.221 of 2010 on the file of the Commissioner Workman Compensation, Madurai.

For Appellants : Mrs.S.Srimathy for
Mr.S.M.S.Johnny Basha

For Respondent : Mr.C.Sundaravadivel

JUDGMENT

The employer has filed this appeal questioning the award made by the Commissioner of Workmen Compensation, Madurai in W.C.No.221 of 2010 filed by the respondent herein.

2.The respondent herein was working as Mazdoor in TNEB. The accident in question occurred on 12.08.2010 on account of the negligence of a co-worker. The respondent suffered multiple injuries all over the body and his left hand had to be amputated. He was drawing Rs.9,997/- as monthly wages. He was aged 40 years. Claiming compensation from the employer, he filed W.C.No.221 of 2010 before the Deputy Commissioner of Labour, Madurai. The authority under the Employees Compensation Act, 1923 by award dated 24.02.2015 directed the employer to pay a sum of Rs.8,38,428/-. If the said sum was deposited within 30 days, it would carry interest at 12% per annum. Aggrieved by the said award, the employer filed this appeal.



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

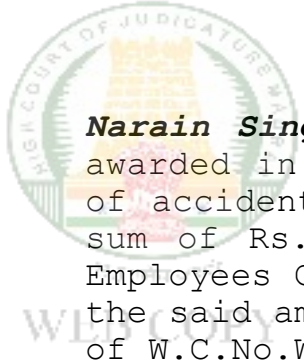
"1. Whether the learned Commissioner is correct in concluding that functional disability as 90%, since the respondent has given alternative employment and the respondent is earning the same salary as before and he is in a position to earn his livelihood without loss in the salary and other benefits.

2. Whether the learned Commissioner is correct in arriving at the quantum of compensation?"

4. Heard the learned standing counsel for the appellant and the learned counsel for the respondent.

5. The learned standing counsel would point out that though the workman suffered disability as claimed by him, it had not affected his earning capacity. This was because the employer had given him alternative employment and he continues to draw the same salary which he was earning earlier. Therefore, since there is no pecuniary loss, the question of awarding compensation will not arise. In this regard, the learned standing counsel placed reliance on the decision of the Hon'ble Supreme Court in **(2010) 10 Supreme Court Cases 347 - Palraj Vs. North East Karnataka Road Transport Corporation**. The said decision relied upon by the learned standing counsel is very much applicable to the facts of this case. When the employer has given alternative employment to the injured workman and the workman continues to draw the same scale of pay, the question of awarding compensation on the ground that there has been functional disability at 90% cannot arise. This Court therefore answers the substantial questions of law in favour of the employer by following the aforesaid decision of the Hon'ble Supreme Court. Therefore, the award passed by the Commissioner of Workmen Compensation has to be necessarily reversed.

6. But, the learned counsel for the workman rightly pointed out that on account of the injury, i.e., amputation suffered by him, the workman cannot get any promotion. So to that extent, there is loss of earning capacity. This Court must bear in mind that he was aged just 40 years when the accident took place. Amputation of one hand has necessarily disabled the respondent from pursuing promotions in his career. Therefore, this Court is inclined to hold that the pecuniary loss suffered by the workman in this regard would be Rs.3,00,000/-. Section 4(1)(c) of Employees Compensation Act refers to loss of earning capacity caused by the injury. Foregoing promotional prospects would also fall within the scope of the said expression. Therefore, the respondent herein is necessarily entitled to a sum of Rs.3,00,000/- on that account. He had incurred Rs.42,815/- by way of medical expenses. As rightly held in **Palraj** case following the decision reported in **AIR 1976 SC 222 - Pratap**



Narain Singh Deo V. Shrinicas Sabata and another, the compensation awarded in favour of the workman will carry interest from the date of accident. The appellant is therefore liable to pay the said sum of Rs.3,42,815/- at the statutory interest rate laid down in Employees Compensation Act. The respondent is permitted to withdraw the said amount from the deposit made by the appellant to the credit of W.C.No.W.C.No.221 of 2010 on the file of the Commissioner Workman Compensation, Madurai.

7. Accordingly, the award dated 24.02.2015 passed in W.C.No.221 of 2010 on the file of the Commissioner Workman Compensation, Madurai is modified. The appeal stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Workman Compensation,
Madurai.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.S.M.S.Johnny Basha , Advocate in SR No. 83252

Arul

SDS/SV MMS/SAR2/09.11.2017/3P/4C

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