



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.390 of 2013

U.Thiagarajan

... Appellant / petitioner

Vs.

1.S.Devendran

2.The Branch Manager,
Bajaj Allianz General Insurance
Company Limited,
Trichy - 17.

... Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the award dated 26.08.2011 made in W.C.No.81 of 2009 by the Workmen's Compensation Commissioner-cum-Deputy Commissioner of Labour, Trichy.

For Appellant : Mr.G.Karnan
For R2 : Mrs.K.R.Shivasankari
for Mr.S.Srinivasaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award dated 26.08.2011 made in W.C.No.81 of 2009 by the Workmen's Compensation Commissioner-cum-Deputy Commissioner of Labour, Trichy.

2.The appellant filed W.C.No.81 of 2009 before the learned Deputy Commissioner of Labour, Trichirappalli, claiming a sum of Rs.20,00,000/- as compensation for the grievous injuries sustained by him in an accident occurred during the course of his employment under the second respondent.

3.In the counter affidavit, it is stated that there is no relationship of employer and employee amongst the first respondent and petitioner. There is no merit in the petition and the same deserves to be dismissed.

4. On the basis of the available evidence on record, the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Trichirappalli has awarded a sum of Rs.2,03,328/- and against the award passed by the Commissioner for Workmen's



Compensation (Deputy Commissioner of Labour), Tiruchirappalli the present Civil Miscellaneous Appeal has been preferred at the instance of the petitioner as appellant.

5. Heard the learned counsel for the appellant and the learned counsel for the second respondent and also perused the materials available on record.

6. The learned counsel appearing for the second respondent herein would fairly submit that as the amendment in the Act has been taken place after the award, it is not possible for them to deny the award and he would also submit that since the legs are amputated, it could be treated as 100% loss of earning capacity and hence, instead of taking the loss of earning capacity at 50%, it may be taken as 100%.

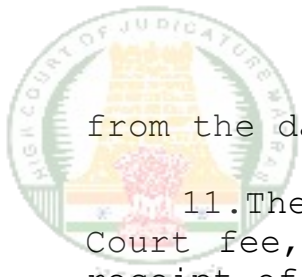
7. Accordingly, the award of the Tribunal is enhanced to Rs.4,06,656/- from Rs.2,03,328/- ($60/100 \times 4000 \times 169.44 \times 100/100$).

8. The learned counsel appearing for the appellant/petitioner has contended that interest has not been awarded from the date of accident and it has been awarded only from the date of award. For deciding the rate of interest from the date of accident, the learned counsel for the appellant would also produce the Judgment in **MOHAN SONI v. RAMAVTAR TOMAR AND OTHERS** reported in **2012 (1) T.N.C.J. 694**, followed by this Court in **R.MURALI v. R.SHYAMALA**, reported in **2014 (2) TN MAC 420**, wherein at paragraph No.20, it has been held as follows:-

".... Therefore, the direction of Deputy Commissioner of Labour-II to pay interest only if the amount is not deposited within 30 days from the date of order is unsustainable. So is the argument of the learned counsel for the appellant that the appellant is entitled to interest from the date of accident. The appellant is entitled to interest from the 31st day of the accident i.e. From 21.02.2009."

9. Following the above Judgements, this Court is of the view that the appellant is entitled to interest from the date of accident.

10. In the result, this Civil Miscellaneous Appeal is allowed. The order of the Deputy Commissioner of Labour, Trichirappalli is modified to the effect that the disability has resulted in 100% loss in earning capacity and hence, the compensation of Rs.4,06,656/- is to be paid to the appellant along with interest @ 12% p.a. From the date of accident after deducting the amount already paid. The second respondent/Insurance Company is directed to pay the arrears with interest within a period of four weeks



from the date of receipt of a copy of Judgment. No Costs.

11. The appellant/claimant is directed to pay the additional Court fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

WEB COPY

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Workmen's Compensation Commissioner-cum-Deputy
Commissioner of Labour, Trichy.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate, SR No. 68773.

+1 CC to M/s.G.KARNAN, Advocate, SR No. 68606.

RJ2

PSM/SKN-RSK/SAR4/18.08.2017/3P/5C

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