

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON :30.10.2018

JUDGMENT PRONOUNCED ON :04.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.No.1252 of 2008

A.Perumal .. Appellant/Claimant

versus

1.P.Ramachandran

2.United India Insurance Company Ltd.,
No.38, Anna Salai,
Chennai - 600 002.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30A of the Workmen Compensation Act, 1923 against the award dated 31.01.2007 passed in W.C.No.211 of 2005 on the file of the Deputy Commissioner for Labour-II [Commissioner for Workmen's Compensation-II], Chennai.

For Appellant : Mr.A.Shanmugaraj
For Respondent No.1 : Exparte
For Respondent No.2 : Mr.T.Chandran

J U D G M E N T

Aggrieved over the award dated 31.01.2007 passed by the Deputy Commissioner for Labour-II [Commissioner for Workmen's Compensation-II], Chennai, in W.C.No.211 of 2005, the appellant, who is the claimant in the above claim petition has preferred this appeal, seeking the relief to set aside the award passed by the Labour Deputy Commissioner and for enhancing the compensation amount.

2. For the sake of convenience hereinafter the parties are referred to, as per their litigative status before the Tribunal.

3. It is a case of injury. The claimant A.Permal was employed under the first respondent, on 30.05.2003, at about 9.00p.m., while the claimant was travelling as Loadman in a

Lorry bearing Registration No.TN-31-A-2122 near Vitalapuram Main Road, Kalpakkam, the said Lorry was capsized due to the negligence of the Lorry driver, due to the said accident, the claimant sustained severe head injury. After the accident, the claimant took treatment as inpatient at Government Hospital, Chengalpet, from 31.05.2003 to 03.06.2003 and then continued his treatment as inpatient at Government General Hospital, Chennai from 03.06.2003 to 21.06.2003. Due to the injury, the claimant suffered permanent disability and he could not do any normal work especially the work done prior to the accident. Since the lorry owned by the first respondent and insured with the second respondent, both the respondents are jointly and severally liable to pay the compensation fixed, if any, in favour of the claimant.

4. Opposing the claim made by the claimant, by filing counter, the second respondent [Insurance Company] disputed the age, income and employment of the claimant. It is the contention of the second respondent that the alleged accident had not occurred in the course of employment, it had occurred while the claimant was doing the work related to the opposite party and hence, the second respondent is not fasten with liability, the disability now stated by the claimant is exorbitant. According to him, the claimant is not entitled to any compensation and hence, prayed for dismissal of the Claim Petition.

5. Before the Labour Deputy Commissioner, the claimant examined himself as P.W.1, the Doctor, who issued the disability certificate to P.W.1 was examined as P.W.2 and P.W.3. Further on the side of the claimant, 11 documents were exhibited as P.1 to P.11.

6. The first respondent remained exparte before the Labour Deputy Commissioner.

7. After concluding the trial, the Labour Deputy Commissioner determined the compensation of Rs.3,74,364/- payable by the second respondent. Aggrieved over the said findings, the claimant is before this Court with the present Civil Miscellaneous Appeal, praying to set aside the award and for enhancing the compensation.

8. When the appeal is taken up consideration, I have heard the arguments of Mr.A.Shanmugaraj, learned counsel appearing for the appellant, Mr.T.Chandran, learned counsel appearing for the second respondent and also perused the records carefully.

9. The only contention raised by the learned counsel appearing for the claimant is that the Labour Deputy Commissioner has directed the second respondent to pay the

entire award amount with interest at the rate of 12% per annum from the date of accident to the date of deposit. According to him, the said finding is not in accordance with law and due to the said accident, the claimant sustained 100% permanent disability. So, the award passed by the Labour Deputy Commissioner is not reasonable and just compensation.

10. Per contra, the learned counsel appearing for the second respondent would contend that the Doctors, who calculated the disability are not treated the claimant at the time of accident, they are examined the claimant for the purpose of calculating the disability after the period of 3 years from the date of accident, so we cannot accept the evidence given by the said Doctors. Further, it is the contentions of the second respondent that, the Labour Deputy Commissioner has rightly appreciated the evidence given by the claimant and calculated the compensation which does not need any interference.

11. I have considered the rival submissions made on either side and perused the relevant material available on record.

12. The first contention raised by the learned counsel appearing for the appellant [claimant] is that, the Labour Deputy Commissioner has not calculated the interest to the award amount as per law. In this aspect, it is necessary to see the judgment in N.GANESAN vs. THILAGAVATHI reported in 2010 (2) TN MAC 80 (DB), in which, the Honourable Division Bench of this Court has held as follows:

"27..... i. The word "falls due" occurring under Section 4-A of the Workmen's Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench decision of the Hon'ble Supreme Court of India reported in Pratap Narain Singh Deo v. Srinivas Sabata and another, 1976 (1) SCC 289 and Kerala State Electricity Board v. Valsala, K., 2000 ACJ 5 (SC), means that interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/orders passed by the Commissioner for Workmen's Compensation."

13. The said observation is nothing but the correct answer now raised by the learned counsel appearing for the claimant.

14. In this aspect, I feel that further discussion is not necessary and accordingly, awarding interest at the rate of

12% per annum for the award amount is set aside and the same is reduced to 7.5% per annum after 30 days from the date of accident and till the date of deposit.

15. Secondly, on going through the disability aspect, before the Labour Deputy Commissioner, the Doctors, who issued disability certificate to the claimant have been examined as P.W.2 and P.W.3 for establishing the disability sustained by the claimant. P.W.2 Dr.Thiagarajan has stated due to the injury found in the brain, the claimant is not in a position to speak anything, further, the strength of the muscles are reduced to the tune of 3/5, due to the said reduction, the help of another man is necessary to the claimant for easy walking and thereby, the claimant sustained 70% disability. For the said aspect before the Labour Deputy Commissioner, during the time of cross examination, P.W.2 has stated as for showing contusion in the brain, scan report is not marked, further he admitted that he is not the Doctor in the field of neurology. So, the said evidence given by P.W.2 clearly established that he is not a competent person to speak about the disability in respect of the neural injuries.

16. However, before the Labour Deputy Commissioner, the discharge summary issued to the claimant by the Government Hospital, Chengalpet and Government General Hospital, Chennai had been marked as Ex.P.2 and Ex.P.3, in Ex.P.2 [discharge summary] issued by the Government Hospital, Chengalpet, it was mentioned that the claimant is a loadman in a Lorry and he sustained injury in his head. In the said circumstances, even though the evidence given by P.W.2 did not disclose the details of injury sustained by the claimant as per the particulars available in Ex.P.2, the claimant proves that he sustained head injury.

17. Apart from that, on the side of the claimant, Dr.Rajappa has been examined as P.W.3 for proving that there is an injury in the eye of the claimant. In this aspect, P.W.3 has stated that due to the injury sustained by the claimant in his eye, the blood circulation to the left eye was reduced, consequently, the percentage of vision has also decreased and due to the said injury, the claimant sustained 20% disability. But in order to support the said evidence, no relevant document has been produced on the side of the claimant that he sustained injury in his eye. If really, the said evidence is true one, definitely the particulars of defect found in the eye has to be noted in the discharge summary issued by the Government Hospital. So without any documents, now the evidence given by P.W.3 cannot be accepted. In the said circumstances, reducing the loss of earning capacity to the tune of 75% is absolutely correct.

18. In fact the loss of earning capacity is different from the loss of physical capacity. The earning capacity is to earn money the incapability of the work has to be ascertained by reference to his incapability to earn wages. Further based on the shoulder injury, there is no difficulty in determining the loss of earning capacity. Whether the injury is not included in the shoulder the reduction or total incapability to earn his wages has to be ascertained from the evidence placed on record. The evidence on record indicated that the appellant/claimant was unable to perform the work as that he was doing earlier. Now the case in our hand, the claimant was employed as loadman and due to the accident, he sustained malunion injuries on his head, as of now, he is not in a position to do the earlier work he performed.

19. In the said circumstances, the only question that remains is whether there is any other work which he was performing at the time of accident. There is significant absence of evidence to suggest that he has capability of performing any other work at the time of accident. In the absence of any such evidence, it cannot be presumed that he has capability of performing any other work. Accordingly, fixing the loss of earning capacity of the claimant as 75% does not need any interference.

20. The Labour Deputy Commissioner has fixed Rs.4,000/- is the monthly income of the claimant. In fact, on the side of the claimant, no document is adduced to show that the monthly income of the claimant. In the said circumstances, we have to calculate the income of the claimant, according to the surrounding circumstances. In this context, it is necessary to refer the judgment of SYED SADIQ ALI AND OTHERS vs. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD. reported in 2014 [1] TNMAC 459 [SC], in which, our Honourable Apex Court has fixed the monthly income of a vegetable vendor as Rs.6,500/- per month in the year of 2006. Since the occurrence pertaining to this Petition had happened in the year 2003, fixing Rs.4,000/- as the monthly income of the claimant is absolutely correct. So in all aspects, except to calculate the interest, the Tribunal correctly assessed the percentage of disability, age, multiplier etc., and calculated the compensation as Rs.3,74,364/-.

21. In the light of the above discussion, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Deputy Commissioner for Labour-II [Commissioner for Workmen's Compensation-II], Chennai in W.C.No.211 of 2005 is confirmed. The interest awarded by the Labour Deputy Commissioner at the rate of 12% per annum is reduced to 7.5% per annum. The reduced compensation is payable with interest at the

rate of 7.5% per annum for the award amount of Rs.3,74,364/- after one month from the date on which the accident had happened till the date of deposit.

22. The second respondent [Insurance Company] is directed to deposit the award amount along with accrued interest and cost with a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the appellant [claimant, A.Perumal] in this appeal is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

The Deputy Commissioner for Labour-II
[Commissioner for Workmen's Compensation-II],
Chennai.

+1 cc to M/s.A.Shanmugaraj, Advocate Sr.No.83140

Judgment in
C.M.A.No.1252 of 2008

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