

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.06.2018

PRONOUNCED ON : 31 .10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A. No.2313 of 2008

T. Suresh

... Appellant

versus

1. S.Pushpam

2. Oriental Insurance Co. Ltd.

United India Building,
Esplanade,
Chennai - 600 108.

... Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 30 of the W.C. Act against the order dated 18.07.2007 passed in W.C. No.358 of 2006 by the Commissioner for Workmen's Compensation - II, Chennai - 600 006 and the same has been received by the Appellant on 04.12.2007.

For Appellant : Mr.Alex Raj

For Respondents: Ms.G.Sukumari for R2

JUDGMENT

This Civil Miscellaneous Appeal is filed under Section 30 of the W.C. Act against the order dated 18.07.2007 passed in W.C. No.358 of 2006 by the Commissioner for Workmen's Compensation - II, Chennai - 600 006 and the same has been received by the Appellant on 04.12.2007.

2. The brief facts of the claim application is that the petitioner / appellant T.Suresh, who is aged about 23 years was employed under the first respondent as Driver for the vehicle bearing Registration No.TN 45 AC 0306, which belongs to the first respondent and he was earning a sum of Rs.180/- per day. On 18.06.2005, while he was proceeding from Palladam, Mangalam Road, near Arasankattupakkam, the mini door vehicle, which came in the opposite direction dashed against the claimant's vehicle and he sustained severe injuries resulting in removal of 2nd and 3rd toes of his left leg. The claimant took treatment at Government Hospital, Palladam and thereafter he was given further treatment at Ganga hospital, Coimbatore and he underwent treatment for further 5 months. Due to the injuries sustained in the accident, the claimant could not attend his job as Driver. The said vehicle, which was owned by the first respondent is

duly insured with the second respondent / Insurance company and the claimant has therefore claimed compensation of Rs.6,00,000/-.

3. The first respondent admitted the employment of the claimant under her as Driver and the wages paid to him was also admitted by the first respondent. The first respondent has also stated that the vehicle driven by the claimant was duly insured with the second respondent / insurance company and hence only the second respondent / insurance company is liable to pay the compensation claimed by the appellant.

4. The second respondent / insurance company has stated in his counter that it is for the claimant and the first respondent to prove that there exists an employer-employee relationship between them. It is for the claimant to prove that he was in possession of a valid driving licence at the time of the accident. The second respondent / insurance company also denied the permanent disability sustained by the appellant and also the wages earned by the claimant.

5. The Tribunal after analysing the evidence and the documents placed by both sides, especially the documents relating to the injuries sustained by the claimant and also the treatment taken by the claimant, awarded a compensation of Rs.3,64,620/- and also fixed the liability on the second respondent / insurance company, since the first respondent vehicle is duly insured with the 2nd respondent.

6. The learned counsel for the appellant has submitted that after the said accident, the appellant has been suffering with 100% disability and he lost his earning capacity, since, he is not in a position to do any normal work especially driving work. However, the Deputy Commissioner of Workmen's Compensation has assessed the disability of the claimant at 70% without any basis. Further, the award of interest has to be fixed at 12% p.a. from the date of accident under Section 4 (a) (3) of Workmen's Compensation Act, as per the reported judgment of the Hon'ble Supreme Court, however, the Deputy Commissioner of Workmen's Compensation has awarded only interest at the rate of 12% per annum from the date of filing the claim petition, which causes prejudice to the claimant. Hence, the claimant preferred this appeal to set aside the award passed by the Deputy Commissioner of Labour, dated 18.07.2007.

7. On the side of the second respondent/Insurance company, it is argued that, if the claimant says that he is suffering from 100% disability and his earning capacity is also lost and he is unable to function as a lorry driver, he has to prove that he had surrendered his Driving Licence in view of his functional disability at 100%. In this context, the learned counsel for the second respondent/Insurance Company places reliance on the decision made in the case of N. Ganesan versus Thilagavathi and others reported in 2010 (1) TN MAC 80 (DB) and submitted that in the present case, the appellant has not filed any proof to show that he is

disqualified from getting any Driving Licence or has surrendered his Driving Licence and that he is totally unable to attend the work as a Driver.

8. On perusal of Ex.P14, X-ray and Ex.P13, the Disability Certificate, which have been issued by PW2, Dr. Thiagarajan, who certified that the claimant has sustained 70% disability, has stated in his report that the claimant has sustained injuries and he lost his second and third toes in the left leg and his movement in the left ankle also reduced and even the normal walk itself is very difficult for him. Hence, considering the above said fact and also the nature of injury sustained by the claimant, this Court is of the view that the injuries sustained by the claimant would definitely resist to continue his occupation and the assessment of his disability can be construed to be 100%. Hence, as per the age determined by the Tribunal i.e., 23 years, the compensation has to be re-determined by fixing 100% without changing the monthly income fixed by the Tribunal, which works out as under :-

Compensation for 100% disability :
Rs.5,20,886/-
(219.95 x 60/100 x 3947)

9. The legal position with regard to the liability to pay compensation stands settled by the decision of the Hon'ble Supreme Court in Pratap Narain Singh Deo - Vs - Shrinivas Sabata and Anr. (AIR 1976 SC 222), delivered by a four Judge Bench, wherein it has been held as under :-

"It has next been argued that the Commissioner committed serious error of law in imposing a penalty on the appellant under section 4A(3) of the Act as the compensation had not fallen due until it was 'settled' by the Commissioner under section 19 by his impugned order dated May 6, 1969. There is however no force in this argument.

Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment." It was not the case of the employer that the right to compensation was taken away under sub-section (5) of section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore, became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident, which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due with

after the Commissioner's order dated May 6, 1969 under section 19. What the section provides is that, if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of a agreement, be settled by the Commissioner. There is therefore, nothing to justify the argument that the employer's liability to pay compensation under section 3, in respect of the injury, was suspended until after the settlement contemplated by section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary."

10. The above decision clearly shows the date from which the liability of the insurer commences and the date from which the compensation becomes payable. Once the date from which the payment of compensation is payable by the Insurance Company is reckoned and determined, permitting the Insurance Company to pay interest only after adjudication of the claim would prejudice the claimant from getting his legitimate claim amount towards interest. In such circumstances, the liability of the insurance company to pay interest commences from 30 days from the date of filing the claim petition with accrued.

11. In the result, the appeal is allowed by directing the 2nd respondent/Insurance Company to pay the enhanced sum of Rs.5,20,886/- to the appellant/claimant together with interest at the rate 12% on expiry of 30 days from the date of accident.

Sd/-

Assistant Registrar(CS v)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

To

1. The Oriental Insurance Co. Ltd.
United India Building,
Esplanade,
Chenani - 600 108.

2. The Commissioner for Workmen's Compensation - II,
Chennai - 600 006

3. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.R.siva Kumar , Advocate SR.No. 74604

+1cc to Mr. A.Shanmugaraj, Advocate SR.No. 75794

<https://hcservices.ecourts.gov.in/hcservices/>

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ASK(26/11/2018)