

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.04.2018

Pronounced on :30.10.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2282 of 2009 & M.P.No.1 of 2009

The New India Assurance Company Ltd.,
Old No.114, New No.204,
Kutchery Road, Mylapore,
Chennai-600 004.

...Appellant

Versus

1.S.Shanmugham

2.T.Rathinakumar

...Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the award passed by the Deputy Commissioner of Labour-II, Chennai in W.C.No.21 of 2008 dated 11.05.2009.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.C.Richard Suresh Kumar
for Mr.G.Mannarmannan

JUDGMENT

This Civil Miscellaneous Appeal is preferred by the appellant - New India Assurance Company, against the award passed by the learned Deputy Commissioner of Labour-II, Chennai in W.C.No.21 of 2008.

2 The brief facts leading to the filing of claim application by the Claimant/first respondent therein is as follows:

On 27.08.2007, at about 21.15 hours, during the course of his employment with the second respondent, the first respondent

had driven the share auto bearing registration No.TN 07 AJ 4115 at Velacherry Vijayanagar flyover. At that time, a van bearing registration No.TN 07 AZ 6096 was parked in the middle of the flyover, purportedly due to a technical snag. The said van was parked without any reflective lights or signal. Therefore, due to darkness, the share auto driven by the first respondent could not notice the parking of the van and eventually, he dashed against the back side of the van. Due to which, the first respondent sustained grievous injury. For the injuries sustained in the said accident, the first respondent has filed the Claim application, claiming compensation of Rs.4,00,000/- against the respondents 1 and 2 in the claim petition, who are the appellant and the second respondent respectively in the present appeal.

3 The second opposite party-the Insurance company has resisted the claim petition by filing a counter statement. In the counter statement, the second Opposite party has denied the employment of the first respondent with the second respondent, the salary said to have been received by the first respondent from the second respondent for his employment and other particulars furnished by the first respondent to prove his employment status. The Second Opposite Party/Appellant also attributed negligence on the part of the first respondent in carelessly driving the vehicle without noticing the stationary vehicle. The Second Opposite Party/Appellant also denied the age of the first respondent, nature of injuries said to have sustained by him in the accident and prayed for dismissal of the Claim awarded to claimant.

4 Before the Tribunal, the first respondent/Claimant has examined himself as AW1 and Dr. Saichandran as AW2 and Exs. A1 to A9 were marked. On behalf of the respondents in the claim petition, neither any witness was examined nor any document was marked. The Deputy Commissioner of Labour, on considering the oral and documentary evidence, held that the first respondent sustained injuries during the course of his employment under the second respondent and the employer-employee relationship between the first and second respondent has not been disproved by the Insurance Company by any evidence. The Tribunal has to determine the compensation by taking into account the age of the claimant and the nature of injuries sustained in the accident and awarded a sum of Rs.2,08,107/- towards compensation and the said sum was directed to be paid by the insurance Company together with interest at 12% per annum. Aggrieved by the same, the present appeal is filed by the Insurance Company.

5 At the time of filing the present appeal, the following substantial questions of law have been raised by the appellant insurance company and they are as follows:-

1.Has not the learned Deputy Commissioner of Labour-II, Chennai, erred in relying on the evidence of AW2, with regard to the assessment of disablement at 60% for the 1st respondent/applicant, which has not been supported by X-rays and the radiological report, to justify the alleged non-union of the bones of the right arm?

2.Was the learned Deputy Commissioner of Labour-II, Chennai, right in determining loss of earning capacity at 50%, solely based on the assessment of disablement of the 1st respondent/applicant at 60% by the Doctor examined as AW2?

3.Is not the learned Deputy Commissioner duty bound to find out whether the injuries and the alleged disablement would result in loss of earning capacity in relation to the avocation of the workman?

4.When there was absolute lack of independent evidence on the side of the first respondent/applicant with regard to the factum of alleged loss of earning capacity, due to the alleged disablement, is the award of the learned Deputy Commissioner of Labour-II, Chennai, determining loss of earning capacity at 50% legally sustainable?

5.Can the Award of the learned Deputy Commissioner of Labour-II, Chennai, determining loss of earning capacity at 50% to the first respondent/applicant be sustained in the absence of any cogent and justifiable reasons for such determination?

6 The learned counsel for the appellant would contend that the compensation awarded by the Deputy Commissioner of Labour is onerous and it is not in consonance with the evidence made available. It is contended that AW2-Doctor has not treated the first respondent at any point of time and therefore, his evidence cannot be accepted to determine the nature of injuries sustained by the first respondent/Claimant. Further, the disablement of the first respondent was assessed by AW2 at 60% without any basis. Similarly, the award amount passed under the head loss of earning capacity and disability are totally disproportionate to the nature of injuries sustained by the first respondent. Therefore, the learned counsel prayed for setting aside the award of the Deputy Commissioner of Labour.

7 The learned counsel for the Claimant / first respondent herein justified the award passed by the Deputy Commissioner of Labour. According to the learned counsel, only a meagre amount was awarded as compensation and it is in consonance with the nature of injuries sustained by the first respondent. Therefore, he prayed for dismissal of the appeal.

8 Heard both sides and perused the records.

9 On perusal of the records, it is seen that before the Deputy Commissioner of Labour, the second respondent/ employer of the first respondent was set exparte and he did not contest the claim petition. Further, the first respondent has not filed any Cross-Objection seeking enhancement of the compensation amount. Further, in this appeal, the insurance company did not question the employer-employee relationship between the first and second respondents herein.

10 The insurance company/appellant would mainly contend that the Doctor, who treated the first respondent was not examined and the deposition of AW2, the Doctor, who never treated the first respondent cannot be given credence.

11 With regard to first question of law, admittedly, there was an accident in which the first respondent sustained compound fracture of right humerus initially, external fixed applied and removed for the said fracture and on failure of the treatment surgical plates and screws were fixed and even thereafter the bones did not get unite and his grip movement and right arm muscles were very much affected. The injuries sustained by the first respondent are reflected from the Discharge summaries issued to him under Exs. A2 and A3.

11(1) With regard to the second question of law, AW2 has rightly assessed the disability of the first respondent at 60%. Merely because AW2 did not treat the first respondent soon after the accident, the deposition of AW2, a Doctor by profession, cannot be disbelieved. The fact remains that the appellant has not produced any documentary evidence before the Tribunal to disprove the nature of injuries sustained by the first respondent or the period of his hospitalisation. Therefore, the appellant is estopped from contending that the deposition of AW2 cannot be given credence.

11(2) With regard to the questions of law 3 to 5, AW.2 was examined before the Deputy Commissioner of Labour and deposed that only after confirming the non union of the bone from the X-ray, he has issued the disability certificate, under Ex.A9. Having regard to the above documentary evidence, the Deputy Commissioner of Labour has awarded a fair and reasonable amount as compensation for the first respondent, which in the opinion of this Court, is in consonance with the nature of injuries sustained by him. Hence, all the questions of law raised by the appellant / Insurance Company have been answered accordingly.

12 In the result, this Civil Miscellaneous Appeal stands dismissed. No costs. The award passed by the Tribunal in W.C.No.21 of 2008 dated 11.05.2009 is confirmed. The Insurance company is directed to deposit the compensation amount with

interest as awarded by the Tribunal, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first respondent is entitled to withdraw the same together with accrued interest. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpl

To

1 The Deputy Commissioner of Labour-II,
Chennai

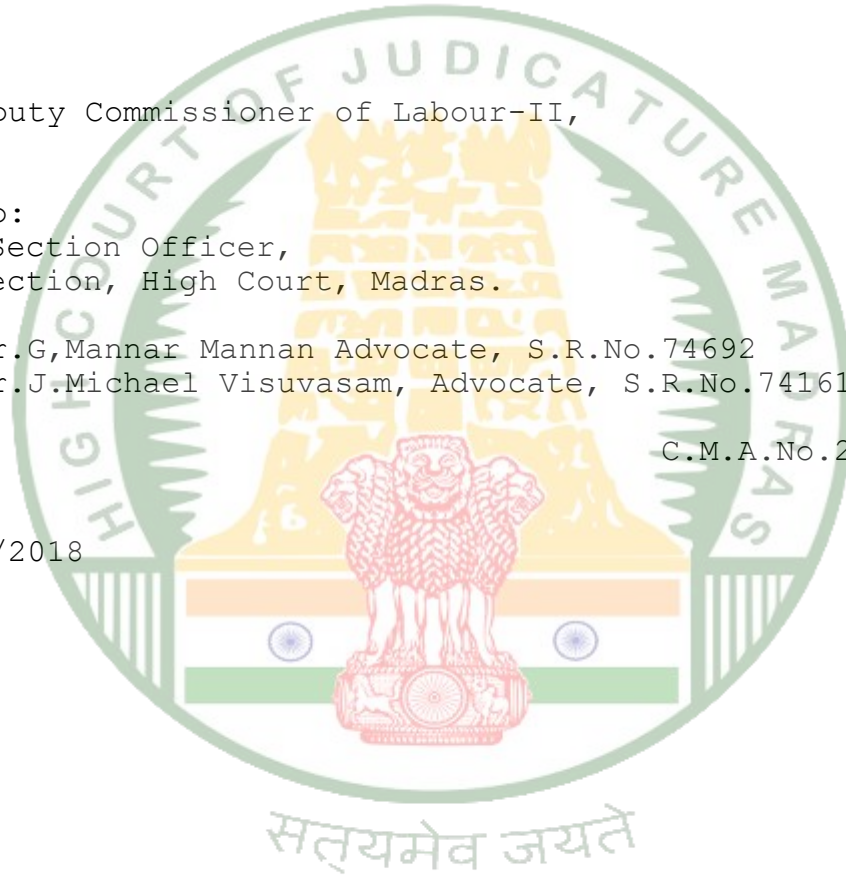
Copy To:
The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.G,Mannar Mannan Advocate, S.R.No.74692

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.74161

C.M.A.No.2282 of 2009

rrs 19/12/2018



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