

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-03-2018

CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
C.M.A.No.1596 of 2016

Suraj ... Appellant

Vs

1.M/s.SRM Engineering Construction Corporation Ltd.,
No.2, Veerasamy Street,
West Mambalam,
Chennai33.

(R1 remained exparte before the Forum
hence his presence may be dispensed with)

2.United India Insurance Co. Ltd.,
A5 & A6, 2nd Floor,
Appasamy Towers,
27, Sir Thiyagaraya Road,
Next to Old Nagesh Theatre,
T.Nagar, Chennai - 17. ... Respondents

PRAYER :Civil Miscellaneous Appeal filed to set aside the award
dated 25.04.2014 and made in W.C.P.No.199/2011 on the file of
the Deputy Commissioner of Labour II, Chennai.

For Appellant : Mrs.A.Subadra
for M/s.M.Malar

For Respondents : R1 - Exparte

J U D G M E N T

The appeal has been filed by the injured claimant against
the award of Rs.1,65,288/-, granted by the Workmen's
Compensation Commissioner for the disability sustained by him
due to the injuries sustained by him in the accident that
occurred on 23.11.2010, when he was working in the workshop and
during the course of the employment under the 1st respondent.

2.The appellant is said to have been employed as a Carpenter
under the 1st respondent on a monthly salary of Rs.9,000/-. On
23.11.2010, in the workshop, when he was cutting wooden logs,
accidentally his hand got struck in the machine and the central
finger got cut of. Therefore, the claim petition was filed

against the 1st respondent, who is the employer and who is covered by the 2nd respondent insurance company. The 1st respondent owner remained exparte and only the insurance company contested the matter. Based on the evidence of PW1 and PW2 (Doctor), the Workmen's Compensation Commissioner determined the disability at 20% and Rs.6,115.80/- as monthly salary, in the absence of any proof in this regard and awarded a sum of Rs.1,65,288/- towards "Loss of Earning Capacity". The said award is challenged before this Court.

3.The appeal has been filed on the following substantial questions of law:

"a)Whether the learned Deputy commissioner of Labour-II is right in fixing the loss of earning capacity as 20%?

b)Whether the Deputy Commissioner of Labour-II is right in not awarding interest at the rate of 12% p.a from the date of accident excluding 30 days from the date of accident under Sec.4(A) of the W.C.Act, while the award was passed in merits? "

4.However, from the facts of the case, one more substantial question of law has to be framed, i.e,Whether the Workmen's Compensation Commissioner was right in fixing the monthly income at Rs.6,155.80/-, as the accident occurred on 23.11.2010, subsequent to the amendment dated 18.01.2010, which fixes the monthly income at Rs.8,000/-. The above question of law is affirmatively answered in favour of the appellant.

5.The learned counsel for the appellant would contend that after the amendment in the Workmen's Compensation Act in the year 2010, by virtue of Central Government's notification, Rs.8,000/- has been fixed as monthly income, by introduction of sub-section (1B) to Section 4 of the Act. When that is the position, only Rs.6,155.80/- was taken as monthly income. Therefore, the learned counsel for the appellant seeks fixation of monthly income at Rs.8,000/- in consonance with the Act. Further, she would submit that 20% disability fixed by the Workmen's Compensation Commissioner is on the lower side and it is contrary to the evidence of the Doctor and therefore she seeks re-fixation of percentage of disability.

6.Even though, the respondents have been served and their names are appearing in the cause list, they have not chosen to appear before this Court. Therefore, on merits this Court proceeds to decide the matter.

7.The Workmen's Compensation Commissioner based on the evidence of PW1 (claimant) and non appearance of the 1st respondent owner to deny the contention of the appellant herein

and also in the absence of any rebuttal evidence on the part of the 2nd respondent insurance company, rightly found that the claimant was working under the 1st respondent.

8.As far as monthly salary is concerned, even though the claimant, claimed a sum of Rs.9,000/-, there was no proof and therefore, the Workmen's Compensation Commissioner based on the minimum wages Notification determined the monthly salary at Rs.6,155.80/-. Before the amendment to the Workmen's Compensation Act 1923, as per Explanation 2 to Section 4(1), the monthly income was fixed at Rs.4,000/- and subsequently, by way of amendment dated 18.01.2010, Explanation 2 to Section 4(1) has been omitted and instead, a new Section 4(1B) has been introduced with effect from 18.01.2010 by which the Central Government by Notification specified for the purpose of Sub Section (1), the monthly wages in relation to an employee. As per the notification as on date only Rs.8,000/- has been fixed as monthly income and therefore Rs.8,000/- has to be taken as monthly income. Accordingly, the amount fixed by the Workmen's Compensation Commissioner at Rs.6,155.80/- is enhanced to Rs.8,000/-.

9. A perusal of the records would show that 20% disability determined by the Commissioner is based on the evidence of medical expert and also the medical documents Exs.P.7 and P.8 and therefore 20% disability fixed by the Tribunal cannot be enhanced and therefore, the second question of law is answered against the appellant.

10.The next question relating to awarding of interest as to whether the interest would be from the date of the accident or from the date of default in the deposit of compensation by the respondent. The very question has been answered by the four Judges Bench of the Hon'ble Supreme Court as early as on 1976 ACJ 451: 1976 (1) SCC 289 in Pratap Narain Singh Dao vs. Sreenivas Sabata and another, further reiterated in Kerala State Electricity Board Vs. Valsala and another reported in 2000 ACJ 5 and another judgment in Jaya Biswal and others Vs. Branch Manager, Iffco Tokio General Insurance Company Limited and another reported in 2016 (2) ACJ 721, Ved Prakash Garg V. Premi Devi and Others reported in 1998 ACJ 1, Oriental Insurance Company Limited V. Siby George reported in 2012 ACJ 2126. The above judgments categorically dictate the law with regard to the cause of action.

11.Section 4(2) of Employees Compensation Act 1923, categorically states that the compensation amount payable to the claimant, after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty- eight days; and thereafter half-monthly during the disablement or during a period of five years,

whichever period is shorter.

12. Therefore, it is very clear from the statute itself that after the expiry of 30 days, the cause of action arose for compensation and it will attract interest at the rate of 12% from that date onwards, which has been categorically declared by Hon'ble Supreme Court. In view of the above Section and the categorical pronouncements of the Hon'ble Supreme Court, 12% interest payable after expiry of 30 days from the date of accident and not from the failure of the respondent to deposit the amount within 30 days. Therefore, the appellant is entitled to interest at the rate of 12%, after expiry of 30 days (ie) from the date of accident viz., 23.12.2010 as the accident occurred on 23.11.2010, till payment. This question of law is also affirmatively answered in favour of the appellant. Hence, compensation comes to Rs.2,16,211/- ($60/100 \times 225.22 \times 8000 \times 20/100$) in addition to Rs.3,000/- for medical bills. Therefore, the total compensation is arrived at Rs.2,19,211/-.

13. The appeal is allowed as stated above and the 2nd respondent is directed to deposit the entire amount along with interest at the rate of 12%, before the Commissioner within four weeks from the date of receipt of a copy of this order, failing which, Section 4(A)(3)(b) shall be applicable. On such deposit being made, the Commissioner is directed to transfer the amount to the injured through RTGS. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner of Labour II,
Chennai.

+1 cc to M/s.M.Malar Advocate sr 18091

C.M.A.No.1596 of 2016

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