

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 1717 of 2016

V. Kanagavel

..Appellant

Vs.

1. V. Bharathiraja

2. Reliance General Insurance Company Ltd.,
No.15-A, PLA Kanagu Towers,
11th Cross, Thillai Nagar Main Road,
Trichy - 620 018.

(The award was passed as against the 2nd respondent,
hence, notice may be dispensed with for the
1st respondent in this appeal) ..Respondents

Appeal filed Under Section 30 of W.C. Act 1923
preferred against the award passed in W.C.NO.346/2014 dated
20.04.2015 on the file of the Deputy Commissioner of
Labour, Salem along with interest and cost.

For Appellant :: Mr.Ma.P. Thangavel

For Respondents:: Mr.S. Arunkumar for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by
the workman as against the award of Rs.9,22,199/- passed by
the Workmen's Compensation Commissioner in W.C. No. 346 of
2014 on the question of quantum.

2. The appellant was employed as a driver under the
1st respondent on a monthly salary of Rs.15,000/-. On
18.11.2013, while driving the lorry bearing Registration
No. TN-28-W-0439 belonging to the 1st respondent and insured
with the 2nd respondent, it dashed against another lorry,
going in front, as it came to a halt all of a sudden. In
the accident, the appellant's right leg got fractured and
subsequently, it was amputated. Further, the nerves of his
right eye were also totally damaged resulting in loss of
vision in his right eye. Therefore, claiming a sum of
Rs.25 lakhs, the appellant filed the claim petition before
the Deputy Commissioner, Labour Court, Salem.

3. On contest, the Workmen's Compensation Commissioner found that the accident occurred during the course of employment under the 1st respondent and also the appellant got injured on 18.11.2013 while he was working. In the absence of any documentary evidence regarding the monthly income, the Commissioner followed the Government Order issued under the Minimum Wages Act and fixed Rs.7699/- as the monthly income of the workman. Since his right leg was amputated, loss of earning capacity was determined as 90% and totally, a sum of Rs.9,22,199/- was awarded as compensation. Challenging the same, the present appeal has been filed.

4. The following substantial questions of law arise for consideration in the appeal:

"1. Whether the DCL, Salem is right in taking meager salary to Driver, instead of taking salary based on the Minimum Wages Act, in the accident which was happened on 18.11.2013?

2. Whether the DCL, Salem is right in not awarding 100% future earning capacity instead of 90% only awarded?"

5. Though the claimant was examined as P.W.1 and he would state that he was earning about Rs.15,000/- per month, in the absence of any proof, the Workmen's Compensation Commissioner determined the monthly income at Rs.7,699/- based on the Government Order issued under the Minimum Wages Act. However, as per Section 4(1-A) of the Workmen's Compensation Act, on the date of the accident, ceiling on wages fixed is Rs.8000/- ie., after amendment by virtue of introduction of Section 4(1B) of Workmen's Compensation Act. Therefore, instead of Rs.7,699/-, this Court refixes the monthly income at Rs.8000/- and the first question of law is answered in favour of the appellant.

6. The Workmen's Compensation Commissioner determined the loss of earning capacity at 90% based on P.W.2's evidence. However, it is a fact that due to amputation of right leg, the appellant is unable to work as a driver and therefore, there is 100% loss of earning power by the appellant. Loss of earning power fixed at 90% by the Commissioner is enhanced to 100%. Taking the required inputs, the compensation payable to the appellant is worked out as hereunder:

வயது	42
வயது காரணி	178.49
சம்பளம்	ரூ. 8000/-
ஊதியம் ஈட்டும் திறனிழப்பு	100%
இழப்பீடு	ரூ. 8000x60/100x178.49x100/100
இழப்பீட்டுத் தொகை	ரூ. 8,56,752/-

The second question of law is also answered in favour of the appellant. The award of Rs. 1,80,134/- towards Medical Expenses is confirmed and the total compensation payable to the appellant comes to Rs.10,36,886/-. The enhanced amount would carry interest @ 12% per annum after 30 days from the date of accident.

6. The Civil Miscellaneous Appeal is partly allowed. No costs.

7. The 2nd respondent Insurance Company is directed to deposit the compensation amount, as per the order passed by this Court today, along with interest, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Commissioner is directed to transfer the same to the account of the appellant through RTGS, after getting the bank account details, within a period of one week thereafter.

Sd/-

Asst.Registrar (Audit)

/true copy/

Sub Asst. Registrar

nv

To

1.The Deputy Commissioner of Labour,
Workmen Compensation Commission,
Salem.

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Copy to:

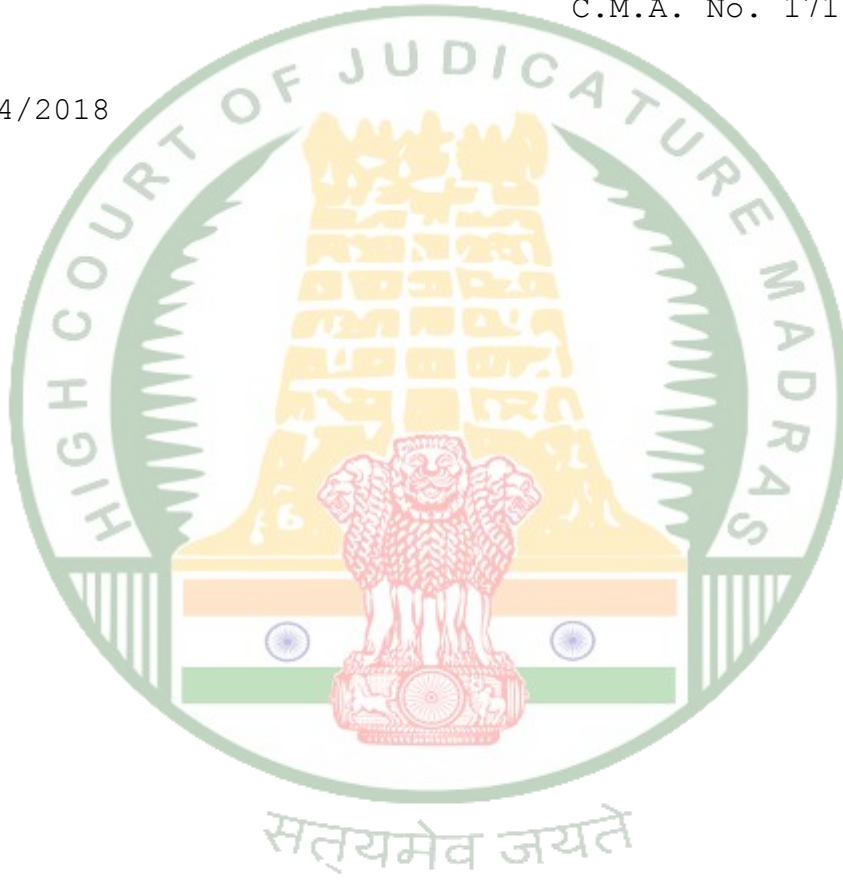
The Section Officer,
VR Section,
High Court, Madras.

+ 1 cc to Mr.Ma.P. Thangavel Advocate,SR.22733

+ 1 cc to Mr.S. Arunkumar Advocate,SR.22946

C.M.A. No. 1717 of 2016

mp(co)
nr 24/04/2018



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