

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.M.A.No.352 of 2011

H.Moorthy

... Appellant/Appellant

Vs.

1. Mr.K.Somasundaram

2. The New India Assurance Company Limited
No.251, Thiruvottiur High Road,
II Floor, Tondiarpet,
Chennai - 600 021.

... Respondents/opposite
parties

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, against the order dated 20.08.2010 passed in W.C.No.4 of 2008 by the Deputy Commissioner for Labour - II (Commissioner for Workmen's Compensation - II), Chennai - 600 006 and the same has been received by the appellant on 04.09.2010 and praying to set aside the same for the following among others.

For Appellant : Mr.U.M.Ravichandran

For R2 : M/s.C.Ramesh Babu

J U D G M E N T

The present appeal has been preferred against the order passed by the Commissioner of Labour-II (Deputy Commissioner-II, Chennai), dated 20.08.2010 in W.C.No.4 of 2008.

2. According to the Claimant, the award of compensation is very meager. In the claim petition, the Claimant has claimed a sum of Rs.5,00,000/- as compensation. On the other hand, the Authority has awarded a sum of Rs.1,83,708/- as compensation. Further, the Authority has awarded compensation on loss of earning capacity at 50% rather than 60%. So also, failed to award the interest, as per Section 4(A) of the said Act. On the basis of the grounds raised, the following substantial questions of law are framed:

(i) Whether the Deputy Commissioner of Labour -II (Commissioner for Workmen's Compensation-II) can fix the disability arbitrarily, even though the disability has been assessed by an expert?

(ii) Whether the Deputy Commissioner of Labour-II (Commissioner for Workmen's Compensation-II) ought not to have fixed the loss of earning capacity as 100%?

(iii) Whether the Deputy Commissioner of Labour -II (Commissioner for Workmen's Compensation-II) is right in not awarding interest at the rate of 12% p.a. from the date of accident under Section 4-A (3) of W.C.Act, while passing the award pass on merit?

3. From the perusal of the factual matrix of this matter, it is seen that the appellant has examined the doctor as PW2, to prove of the disability suffered by him and marked Ex.P13 Disability Certificate. The doctor, deposed that he assessed the disability at 35%, on the basis of Ex.P12 and Ex.P13. The doctor has also deposed that the disability will not reduce the ability to drive, however, the Claimant can drive the vehicle with little difficulty. The Authority, after considering the renewal of licence by the Claimant after the accident, fixed the loss of earning capacity at 50%. In the instance case, it cannot be said that the disability suffered by the Claimant has not been totally taken away, the earning capacity of the appellant.

4. It is well settled that the physical disablement will not be a substitute for functional disability. In the instant case, considering the fact that the claimant is certified by PW2 doctor that he can drive got his licence renewed after accident will prove that the claimant has not lost 100% earning capacity. The authority has rightly fixed the loss of earning capacity at 50%.

5. I do not find any infirmity in the order passed by the Authority. Therefore, the claim of the appellant that he is entitled to 100% loss of earning capacity is not sustainable. Hence, the substantial questions of law 1 & 2 are answered in negative to the appellant.

6. In so far as the 3rd substantial question of law i.e., Section 4(A) (3) of the Act, entitles the Claimant to receive interest at the rate of 12% p.a. from the date of the accident till the date of deposit is concerned, the Larger Bench of the

Hon'ble Supreme Court in the case of Pratap Narain Singh Deo Vs. Shrinivas Sabata and another reported in 1976 A.C.J.141, has held that the the word "falls due" denotes the date of the accident and not the date of final adjudication.

7. In the instant case, the Authority has directed the Respondent/Insurance Company to deposit the amount within 30 days, failing which, the Claimant is entitled to interest at the rate of 12% p.a. The order to pay interest in default of depositing within 30 days is concerned, considered opinion of this Court, is erroneous.

8. In such circumstances, the direction is issued to the 2nd Respondent/Insurance Company to deposit the interest on the award amount from 31st day of the accident, till the date of deposit at the rate of 12% p.a. The Insurance Company is further directed to make the deposit within a period of 4 weeks from the date of receipt of a copy of this order.

9. In view of the above, the 3rd substantial question of law is answered in favour of the appellant and against the second respondent/Insurance Company.

10. In the result, the Civil Miscellaneous Appeal is partly allowed.

Sd/-
Assistant Registrar (CS-ii)

//True Copy//

Sub Assistant Registrar

msm

To

1. The New India Assurance Company Limited
No.251, Thiruvottiyur High Road,
II Floor, Tondiarpet, Chennai - 600 021.

2. The Deputy Commissioner for Labour - II
(Commissioner for Workmen's Compensation - II),
Chennai - 600 006

3. The Section Officer, V.R. Section,
High Court, Madras. (2 copies)
+1cc to Mr.C.RAMESH BABU, Advocate, S.R.No. 11646

C.M.A.No.352 of 2011

SVI (CO)
TR(12/04/2018)