

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.03.2018

Coram:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.2247 of 2017

Vinaykam

..Appellant/Petitioner

vs.

1.Kathiravel

2.Anbu Centre Masan

3.Annadurai

..Respondents/Respondents

Civil Miscellaneous Appeal preferred against the judgment and decree dated 05.04.2017, passed in W.C.No.497 of 2010, by the Commissioner for Workmen's Compensation-II (Deputy Commissioner for Labour-II), Chennai.

For Appellant : Mr.B.Naveen Raja for
Mr.A.Salomi

ORDER

This Civil Miscellaneous Appeal has been preferred by the claimant aggrieved over the compensation of Rs.2,34,601/- awarded by the Commissioner of Workmen's Compensation, for the injuries sustained by him on 04.01.2009, during the course of employment under the respondents.

2.Though the respondents have been served and their names are also printed in the cause list, no one has entered appearance. Therefore, this Court decides the matter on the basis of evidence available on record.

3.The appellant has worked as a coolie under the third respondent for a period of one month on daily wages basis, at the wage of Rs.150/- per day from 05.12.2008 to 04.01.2009. The first respondent is the building owner, second and third respondents are Chief Masons. The first respondent has constructed a Thirumana Mandapam in Erumbi Village. The first respondent is the principal employer and the appellant was working as a coolie in the concrete work, at the third floor of the Thirumana Mandapam, under the employment of the second and third respondents. On 04.01.2009, the concrete floor suddenly fell down and the appellant sustained injuries, namely one

contusion at right fore-arm, swelling and abnormal mobility, abrasion on the right forearm, laceration injury on the right little finger and fracture on the right forearm. Further, due to crush injury, the right fifth finger got amputated. Therefore, the claim petition.

4.The Commissioner of Workmen's Compensation has found that the accident has occurred during the course of employment under the second and third respondent and determined the disability at 47% for the injuries sustained by the appellant and took Rs.4,518/- as monthly salary as per Minimum Wages Government Order, but however, restricted the same to Rs.4000/- as per Workmen's Compensation Act. Challenging the disability determined at 47% and also restriction of monthly income at Rs.4000/-, the appellant is before this Court by way of this Civil Miscellaneous Appeal.

5.The appeal has been admitted on the following substantial question of law:

"Whether the Commissioner for Workmen's Compensation was right in fixing the functional disability at 47% by P.W.2-Doctor as assessed by him at 60%, without assigning any reason or disclosing the basis for such fixation?"

In addition to the above question of laws, on going through the facts, this Court frames the following question of law:

"Whether Workmen Compensation Commissioner was right in restricting monthly wages to Rs.4000/- especially when the salary as per the Minimum Wages Act is Rs.4518/"

6.It is clear that the accident has occurred on 04.01.2009, on which date, the maximum wage, as per Workmen's Compensation Act is Rs.4000/-. In the absence of any evidence regarding the monthly salary, the Commissioner of Workmen's Compensation has rightly calculated the monthly wage, as per the Minimum Wages Act Government Order and determined the same at Rs.4,518/- and restricted it to Rs.4,000/- as per the Act. Since the appellant has failed to adduce any evidence regarding his monthly income, the Commissioner of Workmen's Compensation was constrained to follow the Minimum Wages G.O. and determined the monthly salary at Rs.4,518/- and as per Act, has rightly restricted the same to Rs.4000/- and therefore, the restriction of Rs.4000/- as monthly salary, cannot be disturbed. Therefore, the substantial question of law (1) is answered against the appellant.

7.As far as the disability is concerned, admittedly the appellant has suffered amputation of right little finger and fracture on the 5th metacarpal bone and radius bone and due to the same, the holding capacity of the right hand got reduced. Even P.W.2-Doctor has deposed that the claimant has sustained 15% disability for the loss of his right little finger and 45% disability due to the injury sustained on the right hand. The Commissioner of Workmen's Compensation, taking into consideration all other aspects, has rightly determined the loss of earning capacity at 47%. Though 45% disability has been determined for the injury suffered on the right hand, the same cannot be treated as loss of earning capacity. It is not proportional and it is based on the actual loss of earning capacity due to the disability sustained by the appellant. Therefore, 47% towards loss of earning power due to the disability, determined by the Commissioner of Workmen's Compensation, cannot be found fault with. Therefore, the second substantial question of law is also answered against the appellant.

8.The Commissioner of Workmen's Compensation, after considering the available evidence on record properly, has rightly awarded the compensation. In view of the discussion made earlier, this Court has not found any error nor illegality in the order passed by the Commissioner of Workmen's Compensation and therefore, the present Civil Miscellaneous Appeal deserves to be dismissed.

9.In fine, this Civil Miscellaneous Appeal is dismissed without costs. The order passed in W.C.No.497 of 2010, by the Commissioner of Workmen's Compensation is confirmed.

10.The learned counsel for the appellant has made a contemporary submission that so far the respondents have not deposited the amount awarded by the Commissioner of Workmen's Compensation. If it is so, it is always open to the appellant to initiate proceedings under the Revenue Recovery Act.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msk

To

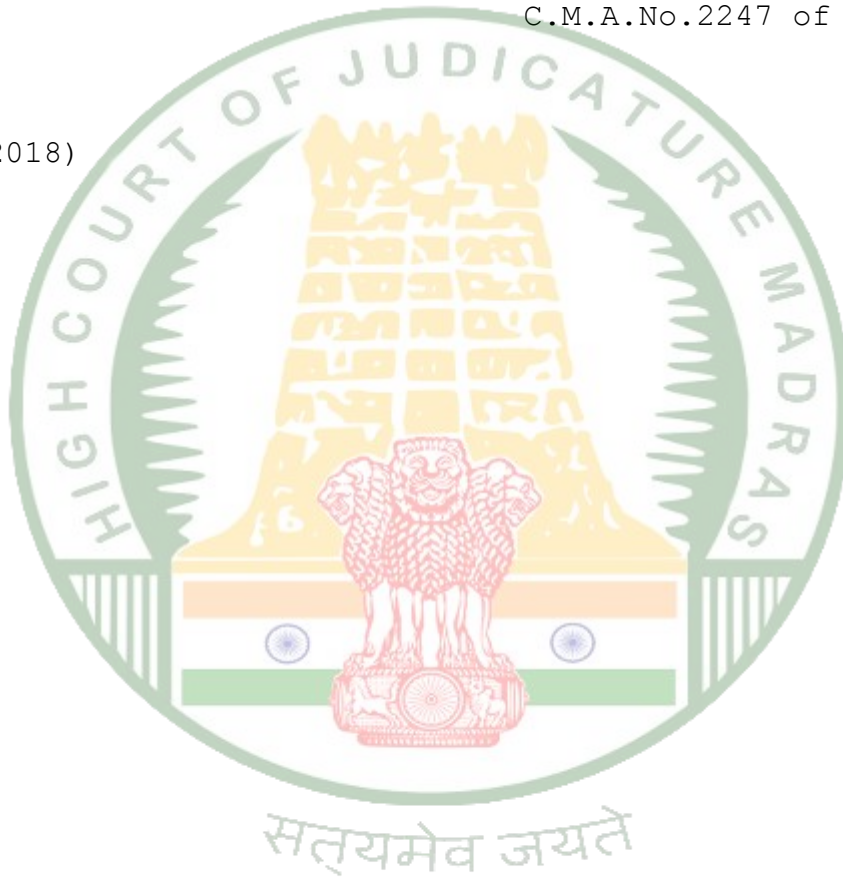
The Commissioner for Workmen's Compensation-II
(Deputy Commissioner for Labour-II), Chennai

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

+ 2 ccs to Mr. M/s.A. Salomi, Advocate Sr.20653

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GJII(CO)
EU(15/11/2018)



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