

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-03-2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 608 of 2018

&

C.M.P. No. 5322 of 2018

V.M. Abuthahir

Proprietor,

Abu International

No.14, Appu Maistry Street,

Opp. Broadway Police Quarters,

Chennai -1.

..Appellant/Respondent

Vs.

P. Moorthy

..Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal as against the order dated 10.10.2015 made in W.C. No. 40 of 2010 on the file of Deputy Commissioner of Labour I, Teynampet, Chennai.

For Appellant :: Mr.A. Ilayaperumal

For Respondent :: Mr.V.G. Anbarasau

J U D G M E N T

The Civil Miscellaneous Appeal has been filed as against the award of Rs. 1,46,104/- for the injuries sustained by the respondent, while he was working as a Punching Machine Operator under the employment of the appellant on 04.09.2009.

2. The facts of the case are as follows:

The respondent/workman was employed as a Punching Machine Operator on a monthly salary of Rs.6000/- together with incentive to the tune of Rs.2000/-, totalling to Rs.8000/- per month. On 04.09.2009, when the respondent was operating the punching machine, his right hand got caught in the machine resulting in crushing of his right hand fingers excepting thumb and little finger and the crushed fingers were removed. Hence, the claim petition.

3. On contest, the Workmen's Compensation Commissioner found that during the course of employment under the appellant, the respondent sustained injury as no safety measures were provided by the appellant. Therefore, the Commissioner, based on evidence, confirmed the monthly salary of Rs.4000/- and based

on the testimony of Doctor P.W.2, confirmed the loss of earning capacity at 29% and awarded Rs. 1,46,104/- as compensation, as against which the present appeal has been filed.

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

"(i) Whether the stand of the respondent that he was not drunkard at the time of doing his work with the Appellant Company?

(ii) The respondent in his cross examination admits that he was drunkard at the time of his work with the company. So, this point has not been considered by the Tribunal is legally correct?"

5. Both the above questions of law are with regard to the status of the respondent i.e, whether he was drunk at the time of accident. Though it has been stated by the Doctor, who gave treatment that the respondent was drunk when he was brought for treatment, no documentary evidence, by way of blood test report has been filed before the Workmen's Compensation Commissioner and therefore, the Commissioner rightly disbelieved the version of the appellant. Therefore, both the questions of law are answered against the appellant.

6. Eventhough there is no question of law raised with regard to monthly salary, this Court frames the following question of law, in regard thereto:

"Whether the Workmen's Compensation Commissioner could fix Rs.4000/- as monthly salary in the absence of any documentary evidence?"

7. As far as the above question of law framed is concerned, the relationship between the appellant and the respondent is not denied. In fact, in cross-examination, the appellant admitted that the respondent was drawing a sum of Rs. 7000/-. Since the salary fixed under the Workmen's Compensation Act is Rs.4000/-, the Commissioner had rightly fixed Rs.4000/- as monthly salary, instead of Rs.7000/-. Therefore, the question of law framed by this Court is also answered against the appellant and this question of law is raised since the learned counsel for the appellant argued this point.

8. In the result, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Connected C.M.P. is closed.

9. Since the compensation amount is stated to have been deposited by the appellant, the Commissioner is directed to transfer the same to the account of the respondent, after getting the bank account details, through RTGS, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

TO:

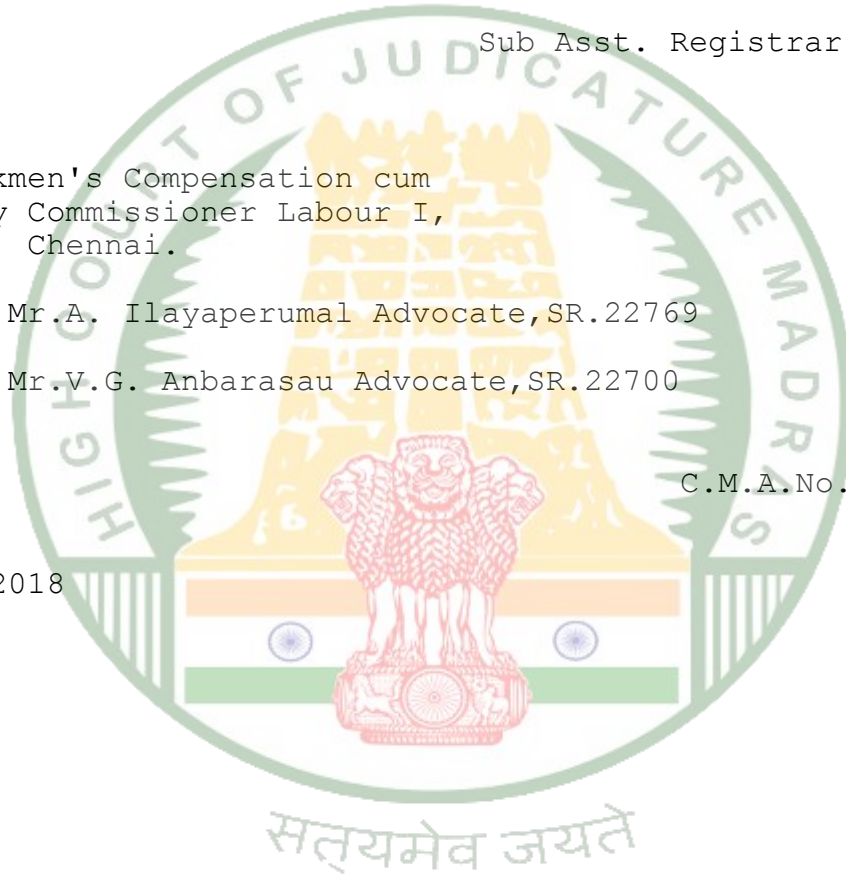
1.The Workmen's Compensation cum
The Deputy Commissioner Labour I,
Teynampet, Chennai.

+ 1 cc to Mr.A. Ilayaperumal Advocate,SR.22769

+ 1 cc to Mr.V.G. Anbarasau Advocate,SR.22700

C.M.A.No.608 of 2018

rsy(co)
nr 17/04/2018



WEB COPY