

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2018

CORAM :

THE HON'BLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.2759 of 2017

M.Jayapal

... Appellant

Vs.

1.K.Mohan

2.Reliance General Insurance Co.Ltd.,

Rai's Tower, 2nd Floor

Plot No.2054, 2nd Avenue

Anna Nagar, Chennai - 600 040.

... Respondents

(R1-remained exparte before the Forum its presence may be dispensed with)

Payer: Civil Miscellaneous Petition filed under Section 30 (1) of Workmen Compensation Act against the Judgment award passed by the Learned Commissioner of Workmen Compensation-Labour -II, Chennai - 600 006 in W.C.No.473 of 2012 dated 02.09.2016.

For Appellant : Ms.A.Subadra
For Ms.M.Malar

O R D E R

The appeal has been filed by the injured workman not satisfied with the quantum of compensation of Rs.3,84,506/- awarded by the Commissioner for the injury sustained by him in the accident which occurred on 03.09.2012 while working under the first respondent.

2.During the course of employment, the appellant sustained grievous injury when he was driving the TATA ACE bearing Regn. No. TN 07 AQ 7069 vehicle belonging to the first respondent insured with second respondent, which collided with MTC bus bearing Registration No.TN-01-N-8241. In the accident, the appellant sustained Grade III

(1) fracture of right shaft of femur

(2) fracture of right hip and

(3) multiple injuries all over the body. Therefore, the Tribunal based on evidence of PW1 and PW2 found that the loss of earning capacity of claimant is 45% and determined the monthly income at Rs.6784/- based on the G.O. issued under the Minimum Wages Act, and taking the relevant factor

as 209.92 as the claimant was aged about 29 years at the time of accident, totally, awarded a sum of Rs.3,84,506/-.

3.The said award is challenged on the question of quantum on the ground that the Minimum Wages as per the amended Act is Rs.8,000/- and even according to the claimant, his monthly income is Rs.6,000/- and he was receiving Rs.100/- per day as batta. Therefore, the said amount has to be enhanced.

4.The appeal has been admitted 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 45% and failed to fixed the loss of earning capacity as 100%?

(b)Whether the Deputy Commissioner of Labour-II is right instead of fixing Rs.6,784/- per month?

5.Regarding the first question of law, though the learned counsel for the appellant would argue that 45% is the loss of earning capacity of the appellant as determined by the Workmen Compensation Commissioner, the Commissioner, failed to take note of the expert evidence of PW2 that claimant sustained injury and assessed his disability as 60% and that he had lost his earning capacity as he could not continue his work as a driver. However, the Tribunal rightly determined the loss of earning capacity as 45%. Taking into consideration that the fractured bone got reunited and that bone marrow injection was given only to reunite both the fractured bones and even when the discharge summary speaks about the joining of fractured bones, PW2 Doctor's evidence that the claimant sustained 60% disability and 100% loss of income was not rightly taken by the Commissioner and 45% was fixed as loss of earning capacity. Therefore, this court agrees with the findings given by the Commissioner and therefore, the first question of law is answered against the appellant.

6.As far as the second question of law is concerned, the accident occurred on 03.09.2012. After Section 4 of the Workmen Compensation Act was amended, a sum of Rs.8,000/- has been fixed as monthly income as per the amended Section 4(1)(B) of the Act. The claim of the appellant before the Commissioner was also that he was earning about Rs.6,000/- as monthly income and Rs.100/- as batta per day. When PW1 has spoken about the details of his earning and when there is no rebuttal evidence on the part of the respondents and taking into consideration of the amendment of the Act and also the notification issued by the Central Government under Section 4(1)(B) of the amended

Workmen's Compensation Act, the Commissioner should have fixed the monthly income as Rs.8,000/- instead of following the G.O. issued under the Minimum Wages Act. Therefore, Rs. 6784/- determined by the Commissioner is set aside and the monthly income of the claimant is fixed at Rs.8,000/-. The loss of income of the appellant is Rs.8000X60X209.92X45%= Rs.4,53,427.2 [4,53,427]. The rate of interest shall be 12% on the compensation amount after 30 days from the date of accident following the judgments of the Honourable Apex Court rendered in Pratap Narain Singh Deo V. Srinivas Sabata reported in 1976 (1) SCC 289 as well as Oriental Insurance Company Limited V. Siby George reported in 2012 (2) TN MAC 395 (SC) : AIR 2012 SC 3144 and Jaya Biswal and Others V. Branch Manager, Iffco Tokio General Insurance Company Limited & another reported in 2016 1 TN MAC 289.

7. Therefore, the second question of law is answered in favour of the appellant and the appeal is partly allowed. The second respondent is directed to deposit the entire amount as per the order of this court along with interest @ 12% per annum after the expiry of 30 days from the date of the accident, within eight weeks from the date of receipt of a copy of the order. On such deposit, the Workmen's Compensation Commissioner has to transfer the amount through RTGS to the account of the appellant within one week, thereafter. No costs.

Sd/-

Assistant Registrar (CS vi)

//True Copy//

Sub Assistant Registrar

may a

To,

1. The Commissioner of Workmen's Compensation-Labour -II,
Chennai - 600 006.

+1cc to Ms.M.Malar , Advocate SR.No. 21540

C.M.A.No. 2759 of 2017

ASK (12/11/2018)

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