

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1109 of 2006

C.Baskar
... Appellant

Vs.

1. Krishna Rao

2. United India Insurance Co.Ltd.,
No.38, Anna Salai,
Chennai 600 002.

...

Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 20 of the Workmen's Compensation Act, 1923, against the order dated 02.07.2005 in W.C.No.292/2004 on the file of the Deputy Commissioner of Labour - II (Commissioner for Workmen's Compensation - II), Chennai 600 006 and pass an award for a sum of Rs.3,28,009/- payable by the respondent with interest at the rate of 12% p.a. from the date of accident.

For Appellant : Mr.A.Shanmugaraj

For 2nd Respondent : M/s.C.Paranthaman for R2

सत्यमेव जयते
J U D G M E N T

The award passed in W.C.No.292/2004 on the file of the Deputy Commissioner of Labour - II (Commissioner for Workmen's Compensation - II), Chennai 600 006 dated 25.07.2005 is challenged by the claimant.

2. According to the claimant, he was working as a driver under the first respondent and while he was driving the Lorry bearing Reg.AP 03 T 4494, it collided with a stationary lorry. In the said accident, he suffered head injury as well as fracture on his right knee. Due to head injury, there was haemerrage on the right side of his head, consequently he looses

memory and continuously suffering head ache. Due to fracture on the legs, he could not stand continuously and he was assessed to have an unstable knee. Therefore he could not continue his avocation as driver and could not drive any vehicle. Considering the disability suffered by him, the loss of earning capacity should have been assessed at 100%, whereas the authority has assessed at 75%, which is far less and has to be enhanced. Further, according to the claimant, the Authority has failed to award interest from the date of accident. Whereas, the authority has awarded interest only in the case of the default in depositing the award amount within a period of 30 days from the date of order. Hence, the claimant has come forward with the present appeal seeking to modify the award.

3. The learned counsel for the Insurance Company vehemently contended that the appellant is not totally deprived of his livelihood. The disability suffered by him will only reduce efficiency of driving and will not totally deprive him of doing any other job. Hence, it cannot be considered as total disability and the assessment of the authority at 75% as loss of earning capacity itself is excess and therefore the appeal has to be dismissed.

4. Heard both sides.

5. On a perusal of the evidence of the Doctor as well as the discharge summary (Ex.A2), X-ray (Ex.A10), Wound Certificate (Ex.A.11) and Physically handicapped certificate (Ex.A9), it is seen that there is memory loss due to the injury in the brain and that the appellant had suffered fracture on knee. The evidence of the Doctor further shows that bones cannot be reunited and it remains as unstable knee. Considering the disability suffered by the appellant, it cannot be stated that the appellant has lost the capacity to earn completely, but, at the same time he may not be able to drive the vehicle. He does not suffer total disability for doing other work. As held by the Hon'ble Supreme Court of India that he can do less hard work, other than what he was doing. In such circumstances, this Court is of the considered view that the loss of earning capacity assessed by the authority under Workmen's Compensation at 75% is reasonable and it need not be enhanced further. So far as award of interest is concerned, as per Section 4 (A) (3) of the Act the claimant is entitled to interest on the amount due. But, in the instant case, the authority has awarded interest from the date of accident, only on the default of deposit of the award amount within 30 days,.

6. The issue involved in this appeal is settled by a decision of the Larger Bench of the Hon'ble Supreme Court in Pratap Narain Singh Deo vs Shrinivas Sabata and another reported

in 1976 A.C.J.141, wherein, the Hon'ble Supreme Court has held that if the word "falls due" as specified under Section 4-A of the Employee's Compensation Act, 1923, denotes the date of accident and not the date of order passed by the authority, the claimant is entitled for interest after 30 days from the date of accident.

7. Accordingly the Insurance Company is directed to deposit the interest on the compensation award from 10.10.2003 till the date of deposit @ 12% p.a. within a period of two weeks from the date of receipt of a copy of this order.

8. With the above observations, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To

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

2.The Section Officer, (2 Copies)
V.R.Section
High Court Madras.

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.14241

+1cc to Mr.C.Paranthaman, Advocate, S.R.No.13800

C.M.A.No.1109 of 2006

RSY (CO)

RRK (03/05/2018)

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