IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1031 of 2013

S.Sampath @ Sampath Kumar ... Appellant

Vs.

1. M/s.Sri Natnachi Transport Company
   No.277, V Block, West Mogappair,
   Chennai 600 058.

2. M/s.The Oriental Insurance Co.Ltd.,
   Divisional Office No.2, U.I.L.Buildings,
   No.8, Esplanade, Chennai 600 108. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of Workmens Compensation Act 1923, against the order passed by the Deputy Commissioner for Workmen's Compensation - I, Chennai 6 in W.C.No.275 of 2008 dated 11.01.2013

For Appellant : M/s.T.G.Balachandran

For Respondents : M/s.Meenakshi Sundaram for R1
Mr.S.Manohar for R2

J U D G M E N T

This appeal is directed against the award under Workmen's Compensation Act in W.C.No.275 of 2018 dated 11.01.2013 on the file of Deputy Commissioner for Workmen Compensation – I Chennai-6.

2. The claimant is the appellant before this Court. According to the claimant the doctor assessed the partial permanent disability at 35%. But authority below had fixed the loss of earning capacity at 20%, which is unjust. The appellant would contend that the Doctor had issued disability certificate which is marked as Ex.A8 and let in evidence in support of the same. Therefore, the loss of earning capacity should have been fixed at 35% as certified by him in the disability certificate. Further, the Authority has failed to award interest from the date of accident but 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.

3. The claimants preferred the appeal on the following questions of law:-

1. Whether the 35% disability reduced to 25% disability for the purpose of compensation by the Deputy Commissioner of Labour without any contra evidence by the second respondent or any other material on record?

2. Whether the order of the Deputy Commissioner of Labour granting interest after failure by the second respondent to pay the award amount within 30 days of receipt of the copy from the Court is legal?

4. Heard both sides.

5. The learned counsel for the claimant contended that the claimant has lost two teeth in the upper jaw and four teeth in the lower jaw and he has lost his mastigating power and that affects his efficiency to drive the vehicle. Therefore the loss of earning capacity should have been considered as 35% corresponding to the physical disability certified by the doctor.

6. The learned counsel for the second respondent/Insurance Company contended that there is no contract to pay interest to the claimant. The policy clearly excludes the policy of interest and therefore the liability to pay interest should be passed on to the employer and not on the Insurance Company. Therefore, they are not liable to pay the interest. In support of this contention, the learned counsel appearing for the Insurance Company relied upon the judgment reported in 2004 ACJ 452 (P.J.Narayan Vs. Union of India and others) and also another case reported in 2006 ACJ 1699 (New India Assurance Co.Ltd., Vs. Harshadbhai Amrutbhai Modhiya and another). In the case of P.J.Narayan Vs. Union of India and others the issue was that as to whether the Insurance Company is statutory liable for payment of interest on the amount of compensation. The Hon'ble Supreme Court has held that the liability of the employer and the insurance is a matter of contract between the insurance company and the insured. It is always open to the insurance company to refuse to insure. Similarly, they are entitled to provide by contract that they will not take on liability to pay interest. In such circumstances, the Hon'ble Supreme Court has held that no body can force the Insurance Company to take on liabilities which they do not want to take on. In the judgment of New India Assurance Co.Ltd., Vs. Harshadbhai Amrutbhai Modhiya and another the Hon'ble Supreme Court has held that the policy expressly excludes interest and penalty imposed on insured employer on account of his failure to comply wtih the requirements of the Act, Insurance Company is not liable to pay the interest and the employer is liable to pay the interest. In the instant case, the respondent had not adduced any evidence as to the liability to pay interest as per the

substantial question of law framed. Though it is the contention made by the learned counsel for the Insurance Company that the terms and conditions specifically excludes payment of interest failed to mark the relevant document and adduce evidence that there is no contract to pay interest on behalf of the employer. I do not find any evidence orally and documentary to show that there is a specific contract which excludes the liability to pay interest to the claimant. In a similar circumstance in CMA.No.219 of 2012 by judgment dated 03.11.2017, this Court has considered the judgment referred above and has held as under.

> Therefore, a duty is cast upon the insurance company to show that there is an exclusion clause in the terms of contract between them and the insured. In the absence of any exclusion clause, it shall be deemed that the insurance company is liable to pay compensation, which includes interest also. The interest part of the compensation cannot be segregated and it cannot be contended that they are liable to pay only principal and not interest.

7. In the absence of any proof that there is a contract which excludes payment of interest as held above, the Insurance Company cannot segregate the interest part of the compensation and is liable to pay the compensation awarded along with the interest.

8. In so far as the interest claimed by the claimant after 30 days from the date of accident is concerned, it 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 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. Accordingly, the claimant is entitled for interest after 30 days from the date of accident.

9. The same view has been followed by a Hon'ble Division Bench of this Court in N.Ganesan Vs. Thilagavathi and another reported in 2010 (2) TN MAC 80 (DB) as under :-

> "27. (i) The word "falls due" occurring under Section 4-A of the Workmen's Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench decision of the Hon'ble Supreme Court of India reported in Pratap Narain Singh Deo v. Srinivas Sabata and another, 1976 (1) SCC 289 and Kerala State Electricity Board v. Valsala, K., 2000 ACJ 5 (SC), means that interest for compensation amount would accrue 30 days after the date of the accident and not

from the date of quantification / orders passed by the Commissioner for Workmen's Compensation."

10. I respectfully follow the dictum laid by the Hon'ble Supreme Court and accordingly hold that the claimant is entitled to interest from the 31st day of accident @ 12% p.a. Since the liability is fastened on the insurer, Insurance Company is directed to deposit interest from the 31st day of accident till the date of deposit @ 12% p.a. within a period of four weeks from the date of receipt of a copy of this order and on such deposit the claimant is entitled to withdraw the same. It is open to the Insurance Company to work out the remedies in the manner known to law.

10. With the above directions, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To
The Deputy Commissioner for Workmen's Compensation - I,
Chennai 6.

Copy to:The Section Officer, VR Section
High Court, Madras (2 copies)

+1cc to M/s.Meenakshi Sundaram, Advocate Sr.No.15067
+1cc to M/s.S.Manohar, Advocate Sr.No.14472
+1cc to M/s.T.G.Balachandran, Advocate Sr.No.14349

CP(CO)
sm:15.5.2018

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