

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.02.2018
CORAM
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
C.M.A.No.1546 of 2006

Royal Sundaram Alliance Insurance Co. Ltd.,
No.46, Whites Road,
Chennai - 600 014.

... Appellant

Vs.

1.T.Balaji

2.M.Balasubramanian

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under section 30 of Workmen's Compensation Act, 1923, against the orders made in W.C.No.284 of 2005 dated 31.01.2006 (received on 01.03.2006), on the file of Commissioner for Workmen's Compensation, Deputy Commissioner of Labour - II, Chennai.

For Appellant : Mr.N.Vijayaraghavan

JUDGMENT

This appeal has been filed by the Insurance company against award for Rs.1,85,227/- on the ground of quantum for assessed loss of earning capacity of 40% for the injured workmen who was cleaner on the lorry on the date of accident on 06.05.2005.

2.Basically, the claim of the workmen is not in dispute and the occurrence of accident and injuries in the course of employment and arising out of it are not challenge. The insurer has assailed the disability assessed and loss of earning capacity accepted without any supporting medical evidence such as X-ray etc., for the injuries on the left ankle of the injured workmen. It is found that the Lower Court has considered the medical evidence vide Exs.P-2 and P-9 and evidence of P.W.-2 doctor and concluded that there was a serious disablement on the left ankle of the injured and that the assessed disability had affected the injured person in his mobility. Such a factual finding cannot be questioned by the insurer without any contra evidence on its side. More importantly, to the knowledge of the insurer, it is a finding of fact. No substantial question of law

arises with regard to such a finding on fact and as such the appeal lacks merits, in limine.

3. It is further found that the appeal was filed on 06.03.2006 against the award dated 31.01.2006 in respect of accident dated 06.05.2005 despite the lapse of 13 years since the date of accident notice has not been completed on the respondents. Though the appellant counsel sought time for fresh notice, this Court is of the view it is not necessary in the peculiar circumstances of the case to grant any further time. The appeal itself is bereft of merits and is accordingly found fit to be dismissed.

4. The insurer has already deposited the entire award amount. The injured claimant would be entitled to withdraw the same, if not already withdrawn. The appeal is dismissed and the award of Lower Court is confirmed. No orders as to costs.

Sd/-

Assistant Registrar(cS VI)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.M.B.Gopalan, Advocate SR.NO.9492

KS(CO)
sm:2.11.2018

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