

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM :

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

C.M.A.No. 2198 of 2013

R.Ussain babu ... Appellant/ petitioner

Vs.

1.K.Prakash

2.M/s.Royal Sundaram Alliance Insurance Company Ltd.,
C/o.Motor Third Party Claims Offices,
Lattice Bridge Road,
Adyar,
Chennai- 600 020. Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 against the order passed by the Deputy Commissioner for Workmen's Compensation II, Chennai- 600 006 in W.C.No.111 of 2012, dated 27.06.2013.

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.N.Vijayaraghavan

J U D G M E N T

The claimant is the appellant. The claimant during employment under the first respondent, while driving lorry bearing Registration No.TN22-CZ-7989 met with an accident, with another vehicle bearing Registration No.TN21-AP-5042. In the said accident, the appellant/claimant has sustained fracture on left fronto temporal parietal region resulting in SDH Craniotomy operation was performed and he was treated as in patient from 14.07.2011 to 02.08.2011. He suffers from headache and giddiness quite often and hence advised to take continuous treatment. The second respondent is the insurer of the vehicle. Hence the claimant preferred a claim petition before the Deputy Commissioner of Labour - II, Chennai, under the Workmen's Compensation, 1923, against the respondents.

2. The first respondent, owner of the vehicle remained *exparte* and the second respondent/insurance company denied the averments made in the claim petition. The employer - employee relationship as well as the factum of accident, were specifically denied. In order to prove his case, the claimant examined himself as P.W.1 and the Doctor was examined as P.W.2 and marked 11 documents as exhibits. On the side of the respondents, no witnesses were examined and no documents were marked.

3. Based on evidence, the Tribunal has held that the accident had taken place during the course of the employment and hence, the insurer of the vehicle, the second respondent is liable to pay the compensation. While passing order, the tribunal has considered the disability certificate and fixed loss of earning capacity at 40%. The appellant/claimant is before this Court, challenging the fixation of loss of earning capacity at 40%, even though the disability certificate and the evidence of the Doctor shows it as 50% and also for interest from the date of accident.

4. Heard both sides.

5. On perusal of the materials produced before this Court, it is seen that the claimant/appellant has proved the accident through Ex.P1 - First Information Report, and the injury sustained by him vide Exs.P2 and P3 - discharge summary issued by Government General Hospital, Chennai. P.W.2- Doctor deposed about the grievous injuries sustained by the appellant/claimant and assessed the disability at 50% vide Exs.P9 to P11. On perusal of Ex.P2 to P4 and P10 and P11, it is seen that the claimant had suffered head injury and surgery was done on his head for blood hemorrhage.

6. In such circumstances, the evidence of P.W.2 Doctor has to be believed that there is no contra evidence on the side of the respondents. Though the Tribunal has accepted the evidence of P.W.2 - Doctor, fixed 40% for loss of earning capacity. The Tribunal has not discussed as to why the loss of earning capacity was fixed at 40%. Considering the nature of injuries suffered by the claimant, this Court is of the considered view that it is very difficult for him to continue his avocation, as Driver. Therefore, the Tribunal should have accepted the evidence of P.W.2 and fix the loss the earning capacity at 50%. Accordingly, the award passed by the Tribunal is modified as under:

$$60/100 \times 218.47 \times 6401 \times 50/100 = \text{Rs.}4,19,528/-$$

7. The learned counsel appearing for the second respondent would submit that they have already deposited the entire award amount.

8. However, the learned counsel for the appellant would contend that the Tribunal ought to have awarded interest on the award amount from the date of accident and not from the date of order passed by it. He has also relied on the judgment of the Hon'ble Supreme Court in PRATAP NARAIN SINGH DEO VS. SHRINIVAS SABATA AND ANOTHER [1976 A.C.J.141] wherein it has been 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, and therefore, the claimant is entitled for interest, after 30 days from the date of accident.

9. Now that the award passed by the Tribunal is enhanced from Rs.3,35,622/- to Rs.4,19,500/-. Therefore, the second respondent - Insurance Company is directed to deposit the enhanced amount, within a period of four weeks from the date of receipt of a copy of this judgment, along with appropriate interest at the rate of 12% per annum from the 31st day of the accident, till the date of deposit, less the amount already deposited, if any, to the credit of the W.C.No.111 of 2012, before the Tribunal.

10. The Civil Miscellaneous Appeal is allowed with the above observation and direction. No costs.

Sd/-
Assistant Registrar (CS v)

//True Copy//

Sub Assistant Registrar

msm/bkn

To

The Deputy Commissioner for
Workmen's Compensation II,
Chennai- 600 006.

+1cc to Mr. M.B.Gopalan, Advocate SR.No. 11096

C.M.A.NO.2198 OF 2013

ASK(02/11/2018)