

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.M.A.Nos.283 & 284 of 2013 and
C.M.P.Nos.1 & 1 of 2013

M/s.ICICI Lombard General
Insurance Company Limited,
'Chottabai Centre',
II Floor, Nungambakkam High Road,
Chennai - 600 034. Appellant (in both CMAs)
2nd respondent

Vs.

1. Mayavan1st Respondent in CMA 283/13
2. Ramalingam1st Respondent in CMA 284/13
3. R.Velmurugan2nd Respondent in both CMAs

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, against the order dated 16.10.2012 made in W.C.No.334 and 338 of 2007 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour - II) Teynampet, Chennai - 600 006.

For Appellant : Mr.K.S.Narasimhan
in both CMAs

For R1 : Mr.R.Sreedhar
in both CMAs

सत्यमेव जयते
C O M M O N J U D G M E N T

Both the appeals have been preferred against the award of compensation made by the (Deputy Commissioner, Labour - II, Chennai), under the Workmen's Compensation Act,1923.

2. According to the appellant, the claimants have suffered injuries in a road accident that took place on 17.02.2006. According to the FIR, which is marked as Ex.A1, it is seen that the claimants along with ten other persons travelled as passengers, the policy does not cover the passengers in a Mini Door Vehicle. Therefore, the Insurance Company is not liable to pay any compensation.

3. On the other hand, the claimants have contended that both of them were working as driver and cleaner of the LGV Mini Door Vehicle, bearing Registration No.TN-31-H-2642 and suffered injuries during the course of their employment. In support of the same, the claimants have let in oral evidence and also marked Ex.A1 to Ex.A9. The said Authority under the Workmen's Compensation Act, 1923 has also relied on the evidence given by the claimants and found that the appellant / Insurance Company has failed to prove that the claimants were passengers. The policy covers the employees as driver and cleaner. Therefore, the contention of the appellant is not sustainable and they are liable to pay the compensation on behalf of the insured.

4. In so far as the disability is concerned Ex.A8, Disability Certificate would go to show that the disability was assessed at 55% and 25% for both the driver and the cleaner respectively. On a perusal of the evidence of the doctor the bones are reunited and the disability does not deprive the loss of earning capacity. The loss of earning capacity assessed by the Authority is slightly higher and liable to be modified.

5. In so far as the age, income and multiplying factor are concerned, the authority had correctly adhered to procedure and does not warrant interference. Therefore, the loss of earning capacity, as discussed above, is reduced by 5% and fixed at 50% and 20% respectively.

6. Accordingly, the award of compensation for both the driver and cleaner is re-worked as under:

60/100 x 3689 x 163.07 x 50/100 : Rs.1,80,470/-
60/100 x 3689 x 135.56 x 20/100 : Rs.60,010/-

7. In the result, the Civil Miscellaneous Appeal is partly allowed to the extent mentioned above. In all other aspects, the impugned award in both the cases shall stand unaltered. The respondents/claimants are entitled to withdraw the deposit along with accrued interest. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msm

To

1.The Commissioner of Workmen Compensation
(Deputy Commissioner of labour -II)
Teynampet Chennai.

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

+2cc to Mr.R.Sreedhar, Advocate, S.R.No.10553,10554

C.M.A.Nos.283 & 284 of 2013

AK (CO)

RRK (25/04/2018)



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