

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.09.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.266 of 2014

C.L.Rajasekar

... Appellant / Petitioner

Vs.

1. M.Shankar

2. M/s.United India Insurance Co.Ltd.
No.19 Andiappa Gramani Street
Royapuram, Chennai - 600 013.

... Respondents / Respondents

This Civil Miscellaneous Appeal is filed under Section 30 of Workmens Compensation Act 1923, against the order passed by the Deputy Commissioner for Workmens Compensation - I, Chennai - 600006 in W.C.No.117 of 2010 dated 24.06.2013.

For Appellant : Mr.T.G.Balachandran

For R2 : Mr.J.Michael Visuvasam

R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the order of the Deputy Commissioner for Workmens Compensation - I, Chennai - 600 006, made in W.C.117 of 2010 dated 24.06.2013, under the following substantial questions of law:-

"Whether the 45% disability reduced to 40% disability for the purpose of compensation by the Deputy Commissioner of Labour without any contra evidence by the 2nd respondent or any other material on record is justified?

2. Whether the order of the Deputy

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

2. The case of the appellant/claimant is that he was working as a Driver under the 1st respondent herein. On 21.01.2010 at about 13.25 hrs, when he was proceeding in Auto Rickshaw (bearing Registration No.TN-01-AH-3549) at Katchery Salai, he collided on MTC bus (bearing Registration No.TN-01-N-3144) which was coming in the opposite direction. Due to the accident, the appellant got severe fracture in Acetabulum and he was taken to Government Hospital, Chennai - 600003 for treatment. He had been admitted as inpatient there from 21.01.2010 to 10.02.2010 and thereafter, due to the same, he has sustained permanent partial disability and has not been able to stand and walk. Even now, the appellant has been taking treatment at the said hospital for the injuries sustained.

3. The said accident occurred during the course of employment. At the time of accident, the appellant was 28 years old and was earning Rs.250/- as daily wages (monthly not less than Rs.7500/-). The Auto Rickshaw (bearing Registration No.TN-01-AH-3549) involved in the accident was owned by the 1st respondent and insured with the 2nd respondent, namely, M/s.United India Insurance Co.Ltd. The Policy Number of the Auto Rickshaw was 011501/31/09/01/00028637, which was valid from 07.11.2009 to 06.11.2010. Since the appellant has been permanently disabled, he claims compensation of a sum of Rs.6,00,000/- from the respondents who are liable to pay jointly or severally, with interest at 12% p.a. from the date of filing this petition. सत्यमेव जयते

4. Denying the above averments of the appellant, the 2nd respondent had filed a detailed counter affidavit, wherein, it has been contended that the appellant has not produced any evidence to prove the issuance of a policy of insurance bearing 011501/31/09/01/00028637, which was valid from 07.11.2009 to 06.11.2010 to and in favour of the 1st respondent in respect of the Auto Rickshaw (bearing Registration No.TN-01-AH-3549) covering the date of the alleged accident. Further, he has not produced any evidence to prove his employment under the 1st respondent in the Auto Rickshaw (bearing Registration No.TN-01-AH-3549).

5. The respondent would also contend that the appellant was only hiring the Auto Rickshaw from the 1st respondent on a daily basis and as such, there was no employer or employee relationship between the appellant and the 1st respondent, and therefore, the appellant is not entitled to get any compensation payable by the 2nd respondent. Further, the respondent would contend that the appellant himself was the cause for the alleged accident and his gross negligence in violating the rules and crossing the yellow line going to the right side of the road which resulted in the alleged accident and thereby, the claim falls within the exceptions provided in Section 3 (1) of the Employees Compensation Act 1923, and the 2nd respondent is not liable to pay any compensation to the appellant. Moreover, the respondent denies the statement of the appellant that he was aged about 28 years and was being paid a sum of Rs.250/- per day at the time of the alleged accident, as there is no strict proof for the same.

6. Furthermore, the respondent would contend that the appellant has not produced any proof to prove that he has sustained grievous injuries on his Acetabulum, hence, the respondent denies the statement of the appellant that he had been admitted for treatment at Government Hospital, Chennai, from 21.01.2010 to 10.02.2010.

7. In addition to the above, the respondent would contend that there is no whisper in the claim petition with regard to any loss of earning capacity suffered by the appellant, consequent to the injuries sustained in the alleged accident, and therefore, the claim petition itself is liable to be dismissed, and hence, sought for dismissal of the same.

8. During the trial before the Deputy Commissioner of Labour- I, Chennai, on the side of the claimant, he himself appeared as PW1 and filed certain documents, which was marked as Exs.P1 to P9, namely, 1) FIR report 2) Discharge Summary of the Government Hospital, Chennai 3) Certificate of his Treatment 4) Lawyer Notice sent to the respondents 5) RC Book and Insurance Policy 6) Driving Licence 7) Auto Permit 8) X-Ray and 9) Disability Certificate. PW2 was a doctor, namely, N.Saisandhiran, appeared on the side of the claimant.

9. The Commissioner, after considering the rival submission of the parties and the evidences available on record, has come to the conclusion that the alleged accident was occurred only when the appellant/claimant was working under the respondent, and since the Auto Rickshaw

involved in the accident was insured with the 2nd respondent by the 1st respondent, the Commissioner of Labour has come to conclusion that the 2nd respondent is liable to pay compensation of Rs.2,05,027/- to the claimant, within a period of 30 days from the date of receipt of a copy of the order. Further, the Commissioner has concluded that on failure to pay the said amount, the respondent has to pay 12% interest from the date of accident till the date of deposit of the award amount.

10. On perusal of the order of the Commissioner, it is clear that the accident occurred was proved and the employee relationship between the appellant and the 1st respondent was also proved, and hence, the claimant was awarded a sum of Rs.2,05,027/- as compensation, to be paid by the 2nd respondent. But, even though, it was clearly proved that as per Policy No.011501/31/09/01/00028637, which was valid from 07.11.2009 to 06.11.2010, the 2nd respondent is liable to compensate claim of Rs.2,05,027/-, the Commissioner has omitted to grant 12% interest from the date of accident till the date of deposit of the award amount, to the claimant. Hence, this Court, is inclined to grant the same to the claimant.

11. In respect of the question raised by the appellant counsel that when the doctor has given a certificate for 45% disability, the lower court has reduced to 40% disability, this Court is of the considered view that the said statement of the appellant has to be rejected, since the Commissioner, only after considering the materials on record, has properly and reasonably come to the conclusion and fixed the disability as 40%. Hence, in respect of 40% disability fixed by the Commissioner, this Court also agrees with the finding of the Commissioner.

12. In view of the above, the order of the Commissioner is modified as stated supra. Accordingly, the 2nd respondent is directed to pay 12% interest, from the date of accident till the date of deposit the award amount, to the claimant within a period of three months from the date of receipt of a copy of this order. The claimant can file a common petition and withdraw the same.

13. The learned counsel for the 2nd respondent would submit that he has already deposited the entire award amount before the Commissioner and now, as per the direction of this Court, he shall pay the interest amount, within the time specified by this Court.

14. Based on the above facts and circumstances of the case, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

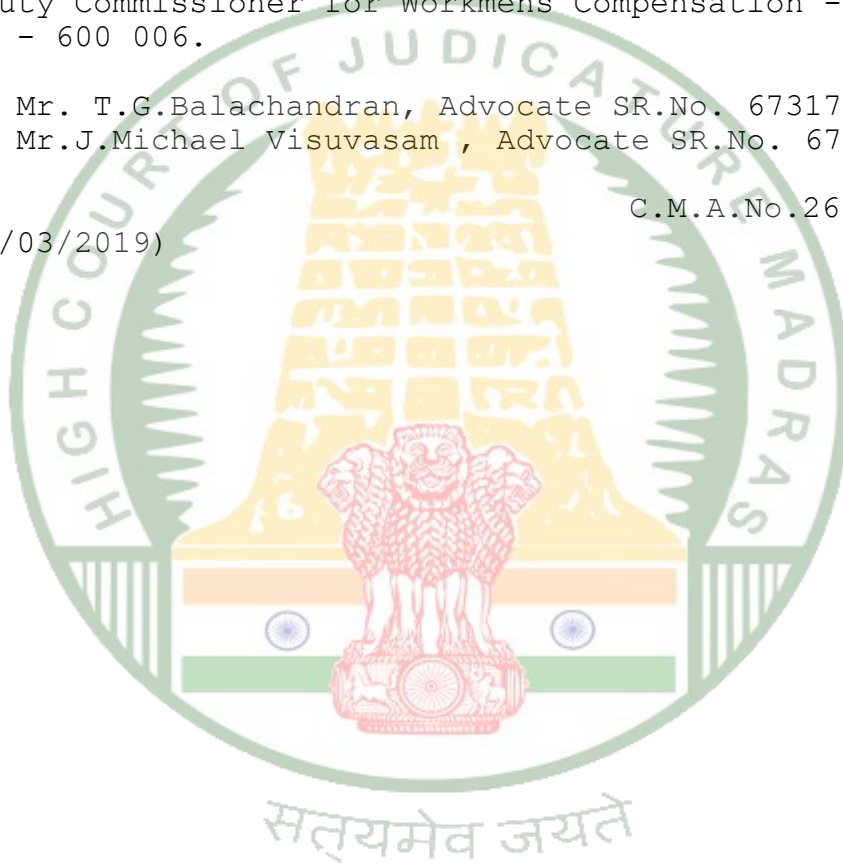
raja
To

The Deputy Commissioner for Workmens Compensation - I,
Chennai - 600 006.

+1cc to Mr. T.G.Balachandran, Advocate SR.No. 67317
+1cc to Mr.J.Michael Visuvasam , Advocate SR.No. 67522

C.M.A.No.266 of 2014

A.SK(20/03/2019)



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