

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2018

CORAM :

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.3536 of 2006

Mr.R.Selvaraj

...Appellant

Vs.

1.K.Palanichamy

2.The Branch Manager,
National Insurance Co., Ltd.,
1152, 1153 Trichy Road,
Ramanathapuram Post,
Coimbatore 641 015.

...Respondents

Prayer : Civil Miscellaneous petition is filed under Section 30 of the Workmen Compensation Act 1923 against the order passed by the Deputy Commissioner of Labour, Coimbatore in W.C.No.86 of 2004 and dated 30.12.2004 which was received on 07.02.2005 in so far as the enhancement of the compensation is concerned.

For Petitioner : Mr.B.Vishnu Chellingu for Ajmal Associates

For Respondent : Mr.M.B.Surekha for R2

ORDER

The appellant has filed the claim petition for injuries suffered by him during the during the course of employment, that had taken place on 30.03.2004. In the accident he sustained severe injuries on his hip and leg. The discharge summary has been marked as Ex.A5 and the doctor fixed the disability at 50%. The authority under the Workmen Compensation Act has fixed his loss of earning capacity at 30% and awarded the compensation. Aggrieved over the lesser compensation, the claimant has come up before this Court with this Civil Miscellaneous Appeal.

2. The learned counsel appearing for the appellant would submit that the injury suffered by the appellant is grievous injury and deprived him of carrying on his avocation as driver. By the sustained injuries, he could not continue with any work and lost 100% earning capacity. Therefore relying on the evidence of the Doctor and Exhibits P4 and P5, the authority should have ordered the loss of earning capacity atleast at 50% as assessed by the Doctor. The award is very meager and therefore, the appellant sought for modification of the award passed by the Tribunal.

3. Per contra, the learned counsel for Insurance Company would vehemently contend that the evidence of PW2/ Doctor cannot be relied on as he is not the Doctor who treated the Claimant. Further Shortening of right lower limb due to accident will not deprive the Driver from driving the vehicle and therefore, the authority has rightly awarded 30% towards loss of earning capacity and the award need not be interfered with.

4. Heard both sides.

5. From a perusal of the Exs.P4 and P5, following injuries were seemed:

“Diagnosis :Displaced Fracture Neck of Femur Right Basicervical

Course in Hospital :A case of fracture neck of femur right open reduction and internal fixation with cancellous screw done. Postoperative period was uneventful.

Diagnosis :AVN Head of Femur Secondary to Fracture Neck of Femur Right Hip.

Course in Hospital : Patient had post traumatic Avascular neurosis of head of Femur right hip., Treated with bipolarhemiarthroplasty, Post-op Partial weight bearing.”

The Doctor who was examined as PW.2, had deposed as follows:-

“He sustained a severe fracture of the neck of the right femur (thigh). Initially treated at CMC Hospital and operated twice at Rex Hospital. Developed a Vascular Necrosis of head of femur (blood supply cut off). In the 2nd operation-Head/neck of femur removed and hemlarchroplastic done (stainless steel implanted). Shortening of right lower limb of 2cm. Petitioner cannot squat or keep the right hip flexed. Walks with a limpina sait and he cannot bear full weight on the right lower leg, he can not now drive the car.”

6. The evidence of Doctor would disclose that the claimant is implanted with stainless steel. His right lower limb was reduced by 2 cm. In the case of Vascular necrosis, normally the Drivers will feel the difficulty and may not be able to drive the vehicle as effectively as they are doing when they are in good physical condition. The Claimant's injury would have caused him inability to drive. Eventhough, he may be able to do light works, certainly cannot continue to be a driver. In such circumstances, the Tribunal ought to have considered that the loss of earning capacity as driver is completely lost and ought to have assessed the loss of earning capacity proportionately. The Assessment that he has lost 30% of his earning capacity is very low. Hence this Court is of the considered opinion, the loss of earning capacity can be enhanced at 50% as claimed by the appellant. Accordingly, I fix the loss of

earning capacity at 50%. In view of the above, the compensation is reworked as under:-

$$60/100 \times 2670 \times 146.20 \times 50/100 = \text{Rs. } 1,17,106.20$$

7. Since there is no dispute about the age and the multiplying fact, which are correctly applied while computing the compensation, I do not interfere in those aspects. The award is enhanced from Rs.70,263/- to a sum of Rs.1,17,106/-. The Insurance Company is directed to deposit the above-said award of compensation, along with interest at the rate of 12% per annum from 31st day of the accident till the date of deposit. The Insurance Company is entitled to adjust the amount due, if they already deposited the award and pay the appropriate interest as specified above.

8. With the above direction, the civil miscellaneous appeal is allowed. No costs.

06.03.2018

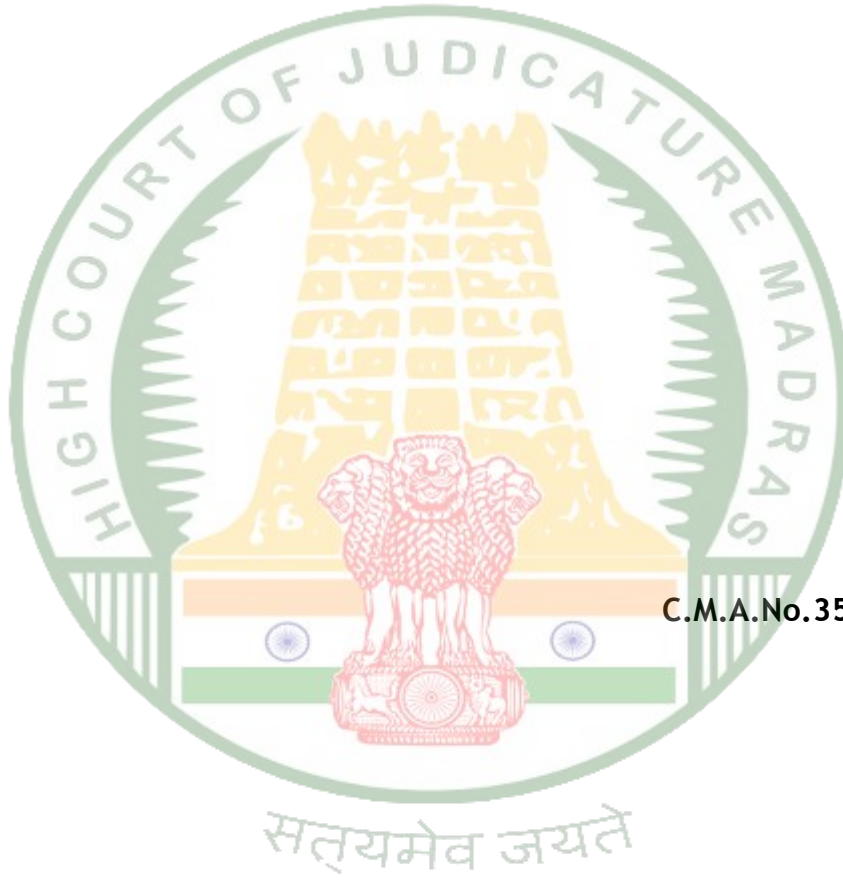
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To
The Deputy Commissioner of Labour,
Coimbatore.

M.GOVINDARAJ.,J.

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