

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2018

CORAM :

THE HONOURABLE Mr. JUSTICE M.GOVINDARAJ

C.M.A. No.793 of 2006

and

C.M.P.No.3111 of 2006

The United India Insurance Co. Ltd.,
Motor Third Party Cell,
No.38, Anna Salai,
Chennai - 600 002.

... Appellant

versus

1. R. Arulanandham

2. K. Navaz Kani

... Respondent

(2nd respondent was set exparte by the authority)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act praying to set aside the order dated 04.07.2005 made in W.C.No.495 of 2004 on the file of Commissioner for Workmen's Compensation-I, (Deputy Commissioner of Labout-I) at Chennai - 600 006.

For Appellant : Mr.C.Ramesh Babu

For Respondent : No appearance for R1

J U D G M E N T

Even though notice was served on the first respondent, none appears on his behalf.

2. The appeal is preferred by the Insurance Company against the award dated 04.07.2005 made in W.C.No.495 of 2004 on the file of Commissioner for Workmen's Compensation-I, (Deputy Commissioner of Labout-I) at Chennai - 600 006.

3. The first respondent/claimant was working as a driver under the second respondent in respect of the van bearing Registration No.TN-04-M-2011 and earning a sum of Rs.6,000/- p.m. The vehicle was covered by an Insurance Policy with the appellant. During the course of such employment, when the first

respondent was driving the vehicle, an accident had taken place on 06.11.2004 in which the first respondent has suffered fracture of right femur, hand and skull. The first respondent therefore has filed the Claim Petition against the appellant and the owner of the vehicle namely the second respondent herein under Workmen's Compensation Act claiming a sum of Rs.4,00,000/- as compensation.

4. The appellant Insurance Company contested the claim petition by filing a counter statement.

5. The Commissioner for Workmen's Compensation-I, upon perusal of the oral and documentary evidence, passed the award dated 04.07.2005 in W.C.No.495 of 2004 awarding a sum of Rs.3,86,702/- in favour of the first respondent and directed the said amount to be paid by the appellant.

6. Aggrieved over the same, the Insurance Company has preferred this appeal on the ground that injury suffered by the claimant is non schedule injury and assessment of disability at 85% is excessive and the award of compensation is liable to be set aside on that ground.

7. On perusal of the award, it is noted that the claimant examined himself as P.W.1 and also the Doctor as PW2 to show the nature and extent of injuries suffered by him. PW2, the Doctor, in his evidence has stated that he had assessed the disability suffered by the first respondent at 85%. Apart from oral evidence, the first respondent has also marked Ex.A1 to Ex.A6 to prove his case. Even though it was contended on behalf of the Insurance company that the compensation amount awarded by the Commissioner for Workmen's Compensation is excessive, the Insurance Company has neither examined any witness nor marked any document to disprove the claim of the first respondent. It is an admitted case that the first respondent was eking out his livelihood by way of his employment as a Driver of the van. He suffered grievous injury in his hands and legs apart from his skull. The Doctor has let in evidence to the effect that the right femur had broken and the claimant had also undergone surgery for the said purpose. During the course of surgery, plates and screws were fixed to reunite the fracture of femur bone. The Doctor has further deposed that the first respondent had suffered fracture in his hand and muscles in the right hip and his knee have become rigoured and the first respondent cannot work without the support of the clutches. Apart from this, there is a fracture in left wrist and left forehead. Due to the fracture in left forehead he cannot turn his head freely. Thus, as per the evidence of PW2, Doctor, the first respondent has totally disabled from carrying out his profession, as before. The functional disability was therefore assessed at 85%.

It is obvious that a person who is carrying out the avocation of driving will be disabled by the grievous injury as explained above. By such injuries he will not be in a position to continue his avocation and therefore percentage of disability fixed at 85% is not excessive but reasonable considering this avocation. Further the disability certificate - Ex.A5, X-ray - Ex.A6 were marked through the Doctor. There is no contra evidence to show that the claimant did not suffer any such injuries and was not disabled from continuing his avocation. In such circumstances, I am of the view that the finding of the Commissioner for Workmen's Compensation-I is based on sound reasoning and it does not require any interference.

8. Accordingly, the appeal merits no consideration and it is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rsi

To

1. The Commissioner for Workmen's Compensation-I,
(Deputy Commissioner of Labour-I),
Chennai - 600 006.
2. The Section Officer,
VR Section, High Court,
Madras-104. (2 Copies)

+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No.889

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MG (Co)
CS/10/04/18

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