



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD) .No.947 of 2016

1.P.C.Balaram Raja

2.Chinna Venkata Raja

3.Jeyasubramanian

4.Gopi @ Venkataraja Gopalan

5.Manikandan

... Appellants/
Respondents 1 to 5

Vs.

1.Prema

... 1st respondent /
Petitioner2.United Indian Insurance Company Ltd.,
Post Office Opposite,
Rajapalayam Branch Office,
391-A, Tenkasi Road,
Rajapalayam - 626 117.... 2nd respondent /
6th respondent

PRAYER:- Appeal filed under Section 30(1) of the Workmen's Compensation Act, 1923 r/w Amended Act, 2000, against the order passed by the Deputy Commissioner of Labour / Commissioner for Workmen's Compensation, Tirunelveli, in W.C.No.100 of 2006 (non-fatal), dated 03.07.2015.

For appellants : Mr.V.O.S.Kalaiselvam

For 1st respondent : Mr.H.ArumugamFor 2nd respondent : Mr.I.Sudhakaran**JUDGMENT**

Heard the learned counsel appearing for both sides and perused the records carefully.

2. The appellants herein 1 to 4 are the share holders and the 5th respondent was a contractor of the firm, where the first respondent / petitioner, while working as labour, has met with an



accident, due to which, her right hand thumb finger upto 1st phalanx was amputated and sustained fracture in the right hand wrist. PW2 - Doctor, attached to Tenkasi Government Hospital, has assessed 65% partial permanent disability and to that effect, he has given Ex.P5 - Disability Certificate. The Deputy Commissioner of Labour, after considering the oral and documentary evidence, has awarded a sum of Rs.2,88,200/- as compensation, out of which a sum of Rs.2,48,200/- was directed to be paid by the appellants 1 to 4 / respondents 1 to 4 and a sum of Rs.40,000/- was directed to be paid by the 2nd respondent / 6th respondent.

3. At the time of admission, the following substantial questions of law were framed for consideration:

a) When the nature of injury is only permanent partial disablement and scheduled injury of part-II of schedule -I Serial No.(5) and accordingly, the loss of earning capacity is 20% only, is it right on the part of the Commissioner for Workmen's Compensation to rely on the erroneous evidence of the Doctor to order 65% loss of earning capacity?

b) When the first respondent on her own invited the injury while undertaking the unassigned work, by her wilful act and on her own volition invited the injury, whether the appellants are liable to pay compensation?

c) Whether the order of the Commissioner for Workmen's Compensation in not permitting the appellants to recover the amount from the contractor, as per Section 12(2) is erroneous?

4. It is the main contention of the learned counsel for the appellants that instead of fixing 20% of loss of earning capacity, the Deputy Commissioner for Labour has erroneously fixed 65% of disability and that as per the information obtained by him in the Right to Information Act, the first respondent has been earning much higher than the salary which she was earning at the time of accident under the "Mahathma Gandhi National Rural Employment Guarantee Scheme".

5. As far as the fixation of 65% of partial permanent disability is concerned, PW2 - Dr.P.Vedhamoorthy, who gave the disability certificate - Ex.P5, had stated in his evidence that the first respondent has not only lost right hand thumb and sustained fracture in the wrist, but also sustained nerve disorder in her right hand index finger, resulting which it became dysfunctional and therefore, he has fixed 65% of partial permanent disability. There is no rebuttable evidence produced on the side of the appellants to show that the first respondent did not suffer that particular injury. Needless to say that the hands and legs are vital for working in a stone crushing unit. When that be so, this Court does



not find any reason to interfere with 65% of disability taken by the Commissioner for arriving loss of income.

6. So far as the contention with regard to the income stated to be earned by the first respondent is concerned, the accident was of the year 2006. The appellants produced an information obtained under the Right to Information Act, wherein it is stated that the first respondent has worked under the "Mahathma Gandhi National Rural Employment Guarantee Scheme" as daily wage employee in the years 2011-12 and 2012-2013 only for 47 and 56 working days respectively and earned the average income of Rs.100/- per day. The Commissioner has fixed a sum of Rs.125/- as notional income for a day, considering the cost of living and market rate prevailed in the year 2006. Even according to the said information, she has earned only 47 to 56 working days per year. When that be so, the amount stated to be earned by the first respondent in the year 2011-2012 and 2012-2013 is very meagre. Further, though the said document was stated to be obtained under the Right to Information Act as early as on 24.01.2013, the appellants have not produced the same before the Commissioner and marked the same through evidence and therefore, the contention of the appellants cannot be countenanced. Viewing from any angle, there is no merit in the contention raised by the appellants. Thus, the first substantial question of law is answered against the appellants.

7. As far as the second question of law is concerned, the appellants have failed to prove the fact that what are all the works she was assigned and what are all the works she was not assigned and as to how the appellants permitted her to do unassigned work and hence, the second question of law is also answered against the appellants.

8. So far as the third question of law is concerned, as per the terms and conditions of the Policy, the 2nd respondent / 6th respondent is liable to pay only Rs.40,000/-, which has been rightly directed to be paid and therefore, the pay and recovery has not been ordered. This Court does not find any reason to interfere with the same. Hence, the third question of law is also answered against the appellants.

9. In the result, this Civil Miscellaneous Appeal is dismissed. The first respondent is permitted to withdraw the entire award amount with accrued interests and costs. No costs.

Sd/-
Assistant Registrar(CO)

/True copy/



To

The Deputy Commissioner of Labour /
Commissioner for Workmen's Compensation,
Tirunelveli.

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+1cc to Mr.V.O.S.Kalaiselvam, Advocate, SR.No.62819.

+1cc to Mr.H.Arumugam, Advocate, SR.No.62380.

+1cc to Mr.I.Sudhakaran, Advocate, SR.No.62164.

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