



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2018

CORAM

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THE HON'BLE **MS.JUSTICE V.M.VELUMANI**

CMA(MD) No.837 of 2018

Karuppasamy

.. Appellant/Petitioner

-Vs-

1.Thiru Kanagaraj

2.The New India Assurance Company Ltd.,
913, Katholic Center Main Road,
Kovilpatti - 628 501.

..Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal - filed under Section 30 of Workmen Compensation Act, 1923, against the award dated 21.12.2015 made in W.C.No.20 of 2012 on the file of the Deputy Commissioner of Labour, Tirunelveli, Sankarankovil.

For Appellant	: Mr.A.B.Natarajan
For R2	: Mr.J.S.Murali
	In SR Stage

J U D G M E N T

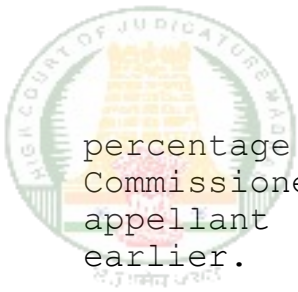
This Civil Miscellaneous Appeal has been filed against the award dated 21.12.2015 made in W.C.No.20 of 2012 on the file of the Deputy Commissioner of Labour, Tirunelveli, Sankarankovil.

2. The appellant is the claimant. He filed the said claim petition claiming a sum of Rs.5,00,000/- for the injuries sustained by him in the accident. In the Claim Petition filed by the appellant, percentage of disability was fixed at 40% as certified by the Doctor and applying the formula, the Deputy Commissioner of Labour, Tirunelveli, directed the second respondent to pay the compensation amount within a period of 30 days from the date of receipt of a copy of that order.

3. Against the said order, the present appeal is filed by the claimant.

4.At the time of admission, both the counsel appearing for the appellant and the second respondent consented for the appeal itself is being disposed of on merits.

<https://hcservices.ecourts.gov.in/hcservices/> 5. The contention of the learned counsel appearing for the appellant is that the Deputy Commissioner erred in fixing the



percentage of disability at 40% instead of 100%. The Deputy Commissioner ought to have fixed disability at 100% as the appellant is not able to drive the vehicle as he was driving earlier.

6. The learned counsel appearing for the second respondent contended that P.W.2 Doctor has certified that the appellant suffered 40% of disability and deposed to that effect. The disability fixed by P.W.2 is excessive and in fact, percentage of disability suffered by the appellant is very much less. As per the Provisions of the Act, the Insurance Company is liable to pay interest only when the amount of compensation payable is determined. The management or Insurance Company is granted 30 days time to deposit the amount. Only when the amount is not deposited within 30 days, interest payable is at 12% and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant and the second respondent and perused the materials available on record.

8. From the materials on record, it is seen that the appellant examined P.W.2 Doctor and filed disability certificate and it was marked as Ex.P.5. P.W.2 Doctor has deposed that the percentage of disability suffered by the appellant is 40% and stated so in the disability certificate-Ex.P.5. Even though the second respondent has disputed the same, they have not examined any Doctor to prove the disability suffered by the appellant is less than 40%. The Deputy Commissioner of Labour, considering the evidence of P.W.2 Doctor and EX.P.5, accepted the percentage of disability at 40% and awarded the compensation. There is no error on fact and law in the said order warranting interference by this Court.

9. So far as payment of interest is concerned, the contention of the learned counsel for the appellant that the respondent must pay interest at 12% from the date of accident has considerable force. This Court considered the similar issue in C.M.A(MD) No.265 of 2018 by order dated 17.09.2018 and held as follows:

"15. As far as C.M.A(MD) No.265 of 2018 is concerned, the issues raised in the said appeal is that the Commissioner erred in not awarding interest from the date of accident. The said contention has considerable force.

16. Section 4 of Workmen's Compensation Act, 1923 deals with the compensation payable. As per Section 4(A) of the Act, if the employer disputes his liability to pay the compensation as claimed by the worker or his legal heirs in case of death, he must make provisional payment based on the extent of liability which he accepts. As per Section 4-A(3) of



the Act, in case of default, the Commissioner shall order payment of simple interest at the rate of 12% per annum. Payment of interest was considered by this Court as well as the Hon'ble Supreme Court and it has been held that the worker or legal heirs of the deceased are entitled to get 12% interest from the date of accident. The Commissioner has failed to properly consider Section 4(A) of the Act and erred in awarding interest only from the date of default committed by the second respondent in depositing the compensation as awarded by the Commissioner.

17. In the result, C.M.A(MD)No.265 of 2018 is allowed awarding 12% interest per annum from the date of accident till the date of deposit. The second respondent Insurance Company is directed to deposit the compensation amount with interest and costs to the credit of W.C.No.23 of 2014, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Tiruchirappalli, within a period of eight weeks from the date of receipt of copy of this Judgment".

10. In view of the above decision, the second respondent is directed to pay interest at 12% on the amount awarded by the Deputy Commissioner from the date of accident till deposit.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS-I)

To,

1. The Deputy Commissioner of Labour,
Tirunelveli, Sankarankovil.

+1 CC To MR.A.B.NATARAJAN, Advocate SR. NO.89678

+1 CC To MR.J.S.MURALI, Advocate SR. NO. 89987

CMA (MD) No.837 of 2018

10.10.2018