

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.1194 & 1195 of 2001
and

C.M.A.Nos.161 & 240 of 2002
and

C.M.P.Nos.17021, 17022, 15342 & 15343 of 2001
and

C.M.P.Nos.2507 & 2508 of 2002

C.M.A.Nos.1194 & 1195 of 2001

The New India Assurance Co. Ltd.,
No.21, Pattulas Road,
Chennai 600 002.

... Appellant
in both C.M.As

-Vs-

1.J.Nagaraj

... 1st respondent
in C.M.A.No.1194/2001

2.V.Govindaraj

... 1st respondent
in C.M.A.No.1195/2001

3.Rajesh

4.The New India Assurance Co.Ltd.,
No.46, Moore Street,
Chennai - 600 001.

... 2nd & 3rd respondents
in both C.M.As.

(3rd Respondent in CMA is the
3rd Opp.Party in the WC case
and is not a necessary party
and is hereby given up)

Prayer in C.M.A.No.1194 of 2001: The Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 19.06.2001 made in W.C.No.192 of 1999 on the file of the Commissioner for Workmen's Compensation-1 (Deputy Commissioner of Labour - 1), Chennai 600 006.

Prayer in C.M.A.No.1195 of 2001: The Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 08.06.2001 made in W.C.No.193 of 1999 on the file of the Commissioner for Workmen's Compensation-1 (Deputy Commissioner of Labour - 1), Chennai 600 006.

For Appellant : Mr.C.Ramesh Babu

For R1 : Mr.A.Shanmugaraj

For R2 : No appearance

For R3 : Given up

C.M.A.Nos.161 & 240 of 2002

1.J.Nagaraj ... Appellant
in C.M.A.No.161/2001

2.V.Govindaraj Appellant
in C.M.A.No.240/2001

vs

1.Rajesh

2.The New India Assurance Co. Ltd.,
No.21, Pattullos Road,
Chennai 600 002.

3.The New India Assurance Co.Ltd.,
No.46, Moore Street,
Chennai 600 001.

... Respondents
in both C.M.As.

Prayer in C.M.A.No.161 of 2002: The Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 19.06.2001 in W.C.No.192 of 1999 on the file of the Commissioner for Workmen's Compensation-1 (Deputy Commissioner of Labour - 1), Chennai 600 006 and pass an award for a sum of Rs.1,40,739/- against the respondents payable by the second respondent with interest at the rate of 12% p.a from the date of accident.

Prayer in C.M.A.No.240 of 2002: The Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 08.06.2001 in W.C.No.193 of 1999 on the file of the Commissioner for Workmen's Compensation-1 (Deputy Commissioner of Labour - 1), Chennai 600 006 and pass an award for a sum of Rs.1,72,669/- against the respondents

payable by the second respondent with interest at the rate of 12% p.a from the date of accident.

For Appellants : Mr.A.Shanmugaraj

For R2 & R3 : Mr.C.Ramesh Babu

C O M M O N J U D G M E N T

By this common order, all the four Civil Miscellaneous Appeals are being disposed.

2.C.M.A.Nos.1194 and 1195 of 2001 have been filed by the Insurance Company questioning the amount awarded by the Commissioner for workmen's compensation to the cleaner and the driver of the lorry involved in an accident.

3.C.M.A.Nos.161 and 240 of 2002 have been filed by the cleaner and the lorry driver claiming interest from the date of accident in terms of Section 4 A (3) of the Workmen's Compensation Act, 1923.

4.By the separate impugned orders, the Commissioner for Workmen's Compensation, the cleaner has been awarded an amount of Rs.1,40,739/- as compensation while the driver of the lorry has been awarded a sum of Rs.1,72,669/- as compensation under the provisions of the aforesaid Act.

5.The respective cleaner and the driver had filed separate claim petitions on 30.07.1999 claiming a sum of Rs.1,50,000/- and Rs.2,50,000/- as compensation towards employment injuries suffered by them on 06.12.1998 when the van driven by the driver collided with another vehicle resulting in injury to the driver and the cleaner. It was stated that both the driver of the van and the cleaner suffered injury and therefore, they were entitled to compensation.

6.Challenging the amounts awarded by the Commissioner for Workmen's Compensation, the Insurance company has filed the above two appeals on the ground that the injury suffered by the cleaner and the driver were non schedule injury falling under Section 4(1) (c) (1) of the Act.

7.On 25.09.2001 when the two appeals in CMA.Nos.1194 & 1195 of 2001 filed by the insurance company were admitted following three questions of law were framed:-

1. Does a Commissioner under Workmen's Compensation Act have jurisdiction to assess the disability

and loss of earning power in respect injuries not specified under Schedule to the Act?

2. Did the Commissioner consider the requirement of law i.e. in terms of Section 4(1) (C) (ii) of W.C.Act and pass an award in favour of the claimant/applicant?

3. Is not the judgment the learned Commissioner vitiated by illegality due to taking the extent of disability in all at 55% and 70% respectively as the loss of earning capacity at 65% in C.M.A. No.1195 of 2001 especially the injuries suffered by the applicants are not covered by any of the items of Schedule I of the W.C.Act, 1923?

8. In C.M.A.Nos.161 and 240 of 2002, following questions of law have been raised:-

Whether the Commissioner for Workmen's Compensation - I ought not to have awarded interest at the rate of 12% p.a. from the date of accident under Section 4A (3) of W.C.Act, when the award was passed on merit?

9. Though these questions of law were framed at the time of admission, no serious submissions have been made by the insurance company to interfere with the impugned order passed by the Commissioner of Workmen's Compensation. The insurance company has not established that the injuries were non-schedule injuries under the provisions of the Act.

10. In view of the same, the substantial questions of law raised by the insurance company are answered against the appellant insurance company.

11. As far as these two appeals filed by the cleaner and the driver are concerned, the law on the subject is well-settled. Once compensation and interest is payable from the date of accident under section 4 A (3) of the Act. Accordingly, the substantial questions of law in C.M.A.Nos 161 and 240 of 2002 are answered in favour of the respective appellants therein.

12. In fine,

i. C.M.A Nos. 1194 and 1195 of 2001 filed by the appellant Insurance Company are dismissed;

ii. C.M.A.No 161 and 240 of 2002 filed by the cleaner and driver are allowed with consequential relief;

iii. No cost.

iv. Consequently, connected Miscellaneous Petitions
are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner for Workmen's Compensation-1
(Deputy Commissioner of Labour - 1),
Chennai 600 006.

2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.A.Shanmugaraj, Advocate, SR.No.82639

+2cc to Mr.C.Ramesh Babu, Advocate, SR.No.81837

+1cc to Mr.A.Shanmugaraj, Advocate, SR.No.82640 (30/12/2019)

C.M.A.Nos.1194 & 1195 of 2001
and
C.M.A.Nos.161 & 240 of 2002
and
C.M.P.Nos.17021, 17022, 15342
& 15343 of 2001
and
C.M.P.Nos.2507 & 2508 of 2002

Kak(12/11/2019)

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