

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.2491 to 2493 of 2008

and

M.P.Nos.1,1 & 1 of 2008

The Branch Manager,
The Oriental Insurance Co.Ltd.,
Suba Govindam Buildings,
Cuddalore - 600 702.

... Appellant in
all C.M.As.

vs

Vijayakumar

... 1st Respondent in
C.M.A.No.2491 of 2008

Sivakumar

... 1st Respondent in
C.M.A.No.2492 of 2008

Thirumoorthy

... 1st Respondent in
C.M.A.No.2493 of 2008

T.Narayanan

... 2nd Respondent in
all C.M.As.

Common Prayer: Civil Miscellaneous Appeals filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the orders dated 05.06.2007 made in W.C.Nos.268 to 270 of 2006 on the file of the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour - 2), Chennai.

For Appellants : Mr.Krishnamoorthy in
all C.M.As.

For Respondents: No appearance in
all C.M.As.

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

By this common judgment, all the three Civil Miscellaneous Appeals are being disposed.

2.The appellant Insurance Company is aggrieved by the impugned orders dated 05.06.2007 passed by the Commissioner for Workmen's Compensation - 2 (Deputy Commissioner of Labour -2), Chennai in W.C.Nos.268 to 270 of 2006.

3.By the impugned orders, the Deputy Commissioner of Labour - 2 has awarded a sum of Rs.93,315/-, Rs.93,986/- and Rs.59,422/- respectively as compensation to the respective 1st respondents in the respective appeals/claimants who were engaged as load men in the tractor bearing registration No. TN 1 A 5882 attached with trailer TN Z 9626 of the 2nd respondent.

4.On 25.09.2005, at about 12.00 noon, while travelling on tractor and trailer, the respective 1st respondents in the respective appeals met with an accident. It was stated that the driver of the tractor drove the tractor in a rash and negligent manner, the trailer which was attached with the tractor got disengaged and the trailer detached from the tractor and capsized on southern side of the road.

5.As a result of the said accident, the respective 1st respondents had suffered by the grievous injuries. Therefore, they filed their respective claim petitions based on the percentage of disability assessed. The Deputy Commissioner of Labour - 2 has awarded aforesaid amounts by allowing the claim petitions.

6.Aggrieved by the same, the appellant has been filed the present Civil Miscellaneous Appeals.

7.The appellant has questioned the order of the Deputy Commissioner of Labour - 2 in awarding the compensations to the respective 1st respondents.

8.The appellant has raised the following substantial questions of Law for consideration in these appeals.

- i. Whether the claim for compensation can be entertained without any documentary evidences to prove that the applicant was a workman and that the impugned accident occurred out of and in the course of employment.
- ii. Whether the Commissioner can fix the loss of earning capacity overlooking the provisions of Sec.4(1) C (II) of Workmen's Compensation Act when there is no evidence fixing loss of earning capacity by a qualified medical practitioner. PW 2 had fixed only the disability at the excessive rate of 20% for the simple injuries.
- iii. Whether compensation is payable under the provisions of Workmen's Compensation Act for

the physical deformity when there was no proof by a qualified medical practitioner about the loss of earning capacity in accordance with the provisions of the Act.

- iv. Whether the percentage of disability can be fixed contravening the percentage provided under the Schedule of the Workmen's Compensation Act.
- v. Whether the application for compensation for simple injuries is maintainable under the Workmen's Compensation Act.
- vi.

9. The main thrust of the learned counsel for the appellant, the disability of the respective 1st respondents which was fixed was excessive for the simple injuries and therefore, the orders of the learned Deputy Commissioner of Labour - 2 were liable to be set aside.

10. I have considered the arguments advanced by the learned counsel for the appellants and perused the orders of the learned Deputy Commissioner of Labour - 2.

11. In the impugned orders, it is noticed that the Deputy Commissioner of Labour has concluded his findings based on the evidence of PW 2 that the respective 1st respondents were assessed to 20%, 25% and 20% permanent disabilities. The appellant had also filed previously Interlocutory Applications before the Deputy Commissioner of Labour- 2 for referring the respective 1st respondents to a Medical Committee/Board. Even though the orders were passed to refer the respective 1st respondents in the respective appeals to the Medical Committee/Board, the appellant Insurance Company did not take any steps to implement the orders.

12. Since the appellant has not taken any steps to refer the respective 1st respondents in the respective appeals to a Medical Committee/Board, the finding of facts arrived by the Deputy Commissioner of Labour -2 based on the evidence of PW 2 cannot be questioned in these Civil Miscellaneous Appeals. The finding of the facts arrived by the Deputy Commissioner of Labour - 2 cannot be disputed in these Civil Miscellaneous Appeals.

13. In view of the above, I find no reasons to interfere the orders of the learned Deputy Commissioner of Labour -2. Therefore, the present Civil Miscellaneous Appeals are liable to be dismissed.

14. Accordingly, all the three Civil Miscellaneous Appeals are dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(DR CJ conf)

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Sub Assistant Registrar

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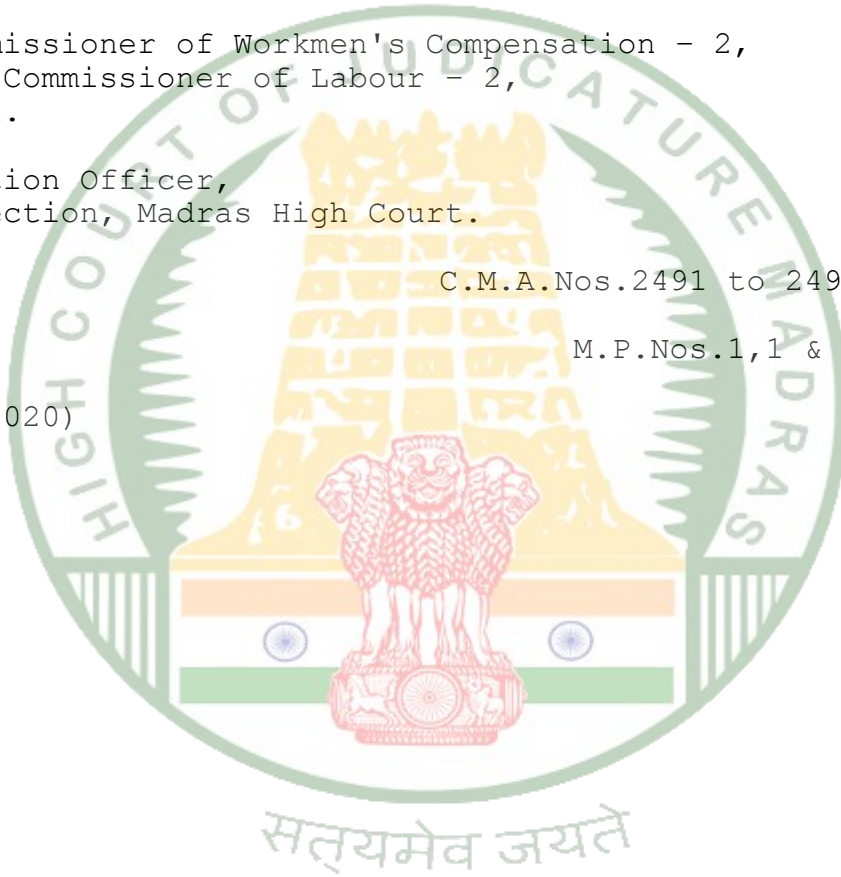
To

1. The Commissioner of Workmen's Compensation - 2,
Deputy Commissioner of Labour - 2,
Chennai.

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

C.M.A.Nos.2491 to 2493 of 2008
and
M.P.Nos.1,1 & 1 of 2008

CNR(CO)
CB(30/01/2020)



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