

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.4238 of 2005

The National Insurance Company Ltd.,
Motor Third Party Claims Office,
No.751, Anna Salai, Chennai-2. ... Appellant

-Vs-

1.K.Kalidoss
2.K.S.Subramaniam ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923 against the order dated 26.09.2005 made in W.C. No.342 of 2003 on the file of the Commissioner for Workmen's Compensation-I (Deputy Commissioner of Labour-1), Chennai-600 006.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.M.Selvam for R1
No appearance for R2

JUDGMENT

The National Insurance Company Ltd. has brought this appeal challenging the correctness of fixing the quantum of compensation by the Commissioner for Workmen's Compensation-I (Deputy Commissioner of Labour-1), Chennai-600 006 awarding a sum of Rs.1,27,074/- towards compensation.

2.Mr.D.Bhaskaran, learned counsel appearing for the appellant submitted that the Deputy Commissioner of Labour-I has passed the award for a sum of Rs.1,27,074/- against the appellant Insurance Company when the Insurance Company is not liable to pay that much of compensation because the above claim cannot be provided under the purview of the Workmen's Compensation Act for the reason that the auto involved in the accident was used by the claimant first respondent on hire basis. Therefore, the question of employer and employee relationship does not arise. But this aspect has been overlooked by the Deputy Commissioner of Labour-I, Chennai. Moreover, when there is no proof available with regard to the avocation, the compensation arrived at by the Deputy Commissioner of Labour-I on the basis of Rs.4,000/- towards salary paid in respect of employment is totally erroneous. The Deputy Commissioner of Labour failed to note that even for amputation of whole little finger, the disability is only 7% as per Schedule II of Workmen's Compensation Act and hence, the assessed disability of 25% is unsustainable.

3.Heard both sides.

4.While admitting the appeal, this Court has framed the following questions of law:

1.Whether the Deputy Commissioner can consider the disability when it is assessed over and above the Schedule II of the Act?

2.Whether the Deputy Commissioner of Labour can take maximum sealing amount provided under the act when there is no evidence to prove the wages?

3.Whether the Deputy Commissioner of Labour 1, can take more than minimum wages as per Minimum Wages Act, when there is no proof for avocation and income?

5.It is seen that on 05.08.2003 at about 1.30 hours (mid-night) while the claimant was driving the Auto rickshaw bearing Registration No.TN 01 Q 5748 which belongs to the second respondent at Arcot Road, Alwarthiru Nagar, dashed against a tree and met with an accident. Thereafter, he was admitted at Government Hospital, K.K.Nagar as out patient and transferred to Government General Hospital, Chennai as inpatient from 06.08.2003 to 12.08.2003 and continuing his treatment as out patient. In view of the aforementioned accident, the claimant was unable to continue his avocation. Therefore, he has filed a claim petition claiming a sum of Rs.3,00,000/- with interest at the rate of 12% per annum.

6.Taking note of the facts that there was an injury sustained by the claimant first respondent in his little finger and the claimant was prevented from continuing his avocation as a driver, the Deputy Commissioner of Labour has passed an Award directing the Insurance Company to deposit a sum of Rs.1,27,074/- towards compensation, fixing 20% disability for the injury sustained on his little finger and fixing 10% disability for the scar mark. As the said amount was deposited long time back and the accident took place in the year 2003, this Court is not inclined to go into the quantum of compensation. Accordingly, the questions of law are answered against the appellant and the appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

+1 cc to M/s.D.Baskaran,Advocate Sr.No. 57959

+1 cc to M/s.M.Selvam,Advocate Sr.No. 57702