

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.836 of 2006
and
C.M.P.No.3268 of 2006

Branch Office,
National Insurance Company Limited,
Salem.Appellant/2nd Respondent

..Vs..

1. R.Muthu1st Respondent/Petitioner
2. C.Permalatha2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the decree and judgment dated 17.10.2005, passed in W.C.No.345 of 2004, on the file of the Workmen's Compensation Commissioner, Salem.

For Appellants : Mr.S.Arunkumar

For Respondents: No appearance

JUDGMENT

The appellant, the National Insurance Company Limited, Salem is the second respondent in Workmen's Compensation No.345 of 2004 on the file of the Deputy Commissioner of Labour, Salem. The claimant/first respondent filed a claim petition before the Deputy Commissioner of Labour, Salem, seeking a compensation of Rs.5,00,000/- for the injuries sustained by him.

2.On 25.08.2003, the claimant/first respondent changed the punctured front tyre of the lorry bearing Registration No.TN X 8969 belonging to the second respondent and insured with the present appellant and when he tried to remove the stones which were kept in front and back side of the tyres, the driver of the lorry, suddenly took the lorry, without noticing that the claimant/first respondent was removing the stones in front and

back side of the tyre, as a result of which, the tyre rolled and crushed the fingers of the claimant/first respondent. The Deputy Commissioner of Labour, Salem after analysing the evidence on record, awarded a compensation of Rs.4,59,388/- to the claimant/first respondent.

3. Aggrieved over the orders passed by the tribunal, the National Insurance Company Limited has filed the present appeal contending that since the claimant/first respondent was only a cleaner of the lorry, the tribunal was wrong in fixing the disability as 100%. The award passed by the tribunal under various heads is extracted hereunder:

Age of the claimant	23 yrs
Factor	219.95
Loss of Income	Rs.3,481/-
Loss of earning capacity	100%
Total Award amount (Rs.3,481 x 60 x 219.95 x 100) 100 x 100	Rs.4,59,388/-

4. A perusal of the orders passed by the tribunal shows that it has relied on the following decisions:

"It is Pertinent to quote the case Law published in 2005(1) T.A.C.57(Bom.) between Arjun Gongappa Kore and Rirmal Bhagchaad Bothra and another, The High Court of Bombay held as:-

"Workmen's Compensation Act, 1923- Sections 4(1)(b) and 2(1) - Compensation - Permanent total disability-injured aged 39 years, employed as truck driver sustained injury in right Leg - Injured underwent several operations and a steel rod inserted in right Leg - Unable to perform work doing earlier - Fracture to right leg and right foot - Despite treatment fractures left him with a shortened leg-injured neither can bend his right knee nor right foot. Evidence on record disclosing that injured cannot drive vehicle - Injury resulted to complete disablement whether compensation has rightly been computed on basis of Section 4(1)(c)(ii) of the Act - Held - No - Compensation payable to injured must be computed under Section 4(1)(b) of the Act - Injury suffered rendered him totally disabled - compensation modified and injured held entitled to Rs.93,450/-

instead of Rs.23,363/-"

Another case Law published in 2005(1) T.A.C.348 (A.P.) between Samala Gangadhar and another, the High Court of Andhra Pradesh held as:-

"Workmen's Compensation Act, 1923-Section 2(1)(1) - Total disablement - Proof of - Injure, a driver of tipper by profession - Medical evidence proving that injured sustained 40% partial permanent disability as also lose of earning capacity of 50% and functional disability of 45% - Injured not able to drive vehicles in future - Whether injured sustained 100% loss of earning capacity instead of 40% - assessed by Commissioner - Held - (YES) - Injured entitled to compensation on basis of 100% loss of earning capacity."

Yet another case Law published in 2001 ACJ 2105 between Rayapati Venkatesware Rao and Mantai Sambasiva Rao and another, the High Court of Andhra Pradesh at Hyderabad held as:-

"Workmen's Compensation Act, 1923 - Section 2(1)(1) - Total disablement - Cleanex suffered injuries in the course of his employment and sustained 20 to 25 per cent physical disability but he cannot perform his duties as a cleaner as he was performing prior to the accident, he has to use a stick to walk - Whether the workman is entitled to compensation for Loss of earning capacity at 100% prevent though his physical disability is 20 to 25 per cent Held: YES."

Another Case Law reported in 2004(3) T.A.C.121(All), in a case between New India Assurance Company Limited, and Shamiullah Khan and another the High Court of Allahabad held as:-

"Workment's Compensation Act, 1923, Section 4(1) - Compensation - Injury - Permanent total disablement - injured working as driver of truck - Medical evidence that injured after accident totally unfit to drive heavy vehicles - Case of total loss of earning capacity - No fault found in order of Commissioner that injured suffered 100% loss of earning capacity - Award of compensation at Rs.81,540/- called for no interference."

Yet Another Case Law reported in 2005 (1) T.A.C.57 (Bom.) between Arjun Gangappa Kore and Nirmal Bhagchand Bothra and others, the High Court of Bombay held as:-

"Workmen's Compensation Act 1923 - Section 4(1)(b) at 2(1) - Compensation - Permanent total disability - Injured aged 39 years, employed as truck driver sustained injury in right leg - Injured underwent several operations and steel rod inserted in right leg - unable to perform work doing earlier - Fractures to right leg and right foot - Despite treatment fractures left him with a shortened leg - injured neither can bend his right knee nor right foot - Evidence on record disclosing that injured cannot drive vehicle - Injury resulted in completed disablement, whether compensation has rightly been computed on basis of Section 4(1)(c)(ii) of the Act - Held - (No) - Compensation payable to injured must be computed under Section 4(1)(b) of the Act Injury suffered rendered him totally disable compensation modified and injured held entitled to Rs.93.45% instead of 23,363/-."

Another Case Law reported in 2005(1) T.A.C.348 (A.P.) between Samala Gangadhar and CH.Gangaram and another, the High Court of Andhra Pradesh has as:-

"Workmen's Compensation Act, 1923-

Section 2(1)(1) - Total disablement - Proof of - Injured, a driver of tipper by profession - Medical evidence proving that injured sustained 40% partial permanent disability as also loss of earning capacity of 50% and functional disability of 45% - Injured not able to drive vehicles in future - Whether injured sustained 100% loss of earning capacity instead of 40% assessed by Commissioner - Held - (YES) - injured entitled to compensation on basis of 100% loss of earning capacity."

5.It is pertinent to point out that in all the above decisions, the injured were drivers and in the instant case, the injured was only a cleaner of the lorry. Furthermore, in all those decisions, medical records shows that all the injured were unable to perform their regular work as before and therefore, 100% was taken up for calculating loss of earning capacity. Hence, the tribunal was wrong in fixing the percentage of

disability as 100%. In the instant case, the percentage should be taken up only as 55%, as per the evidence of Dr.B.Sridhar (PW2).

6.Thus, the award passed by the tribunal is scaled down to 55% and the Compensation awarded by this court is extracted hereunder:

Age of the claimant	23 yrs
Factor	219.95
Loss of Income	Rs.3,481/-
Loss of earning capacity	55%
Total Award amount (Rs.3,481 x 60 x 219.95 x 55) 100 x 100	Rs.2,52,664/-

7.In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the tribunal is reduced from Rs.4,59,388/- to Rs.2,52,664/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The appellant is directed to deposit the compensation of Rs.2,52,664/-, less the amount already deposited by them, together with interest at the rate of 7.5% per annum on Rs.2,52,664/- from the date of claim petition till the date of deposit to the credit of W.C.No.345 of 2004, dated 17.10.2005, on the file of the Workmen's Compensation Commissioner, Salem within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the claimant/first respondent is at liberty to withdraw the entire amount after following due procedure of law.

(v) If the amount already deposited by the appellant is in excess of the amount awarded by this court, the appellant is at liberty to withdraw the same.

vkr

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
The Motor Accidents Claims Tribunal,
Workmen's Compensation Commissioner,
Salem.

+1cc to M/s. S.Arunkumar, Advocate, SR.No.7767

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and
C.M.P.No.3268 of 2006

Kak(06/05/2019)



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