

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.18 OF 2011

S.Prabakaran

... Appellant

.Vs.

1. A.Akbar Basha

2. The New India Insurance Co. Ltd.,
No.92, G.N.Chetty Road
T. Nagar, Chennai 600 017

...Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 30 A of the W.C.Act 1923, to set aside the order dated 13.09.2010 in W.C.No.43/2007 by the Deputy Commissioner of Labour - II (Commissioner for Workmen's Compensation - II), Chennai 600 006.

For Appellant : Mr.A.Shanmugaraj.

For Respondents : Mr.J. Chandran for R2
R1 - No appearance.

JUDGMENT

The appellant has filed this Civil Miscellaneous Appeal against the order dated 13.09.2010 passed by the Deputy Commissioner of Labour - II, Commissioner for workmen's compensation - II, Chennai in W.C.No.43 of 2007. The petitioner has raised the following substantial questions of law,

"1. Whether the Deputy Commissioner of Labour - II can reduce the disability, while the disability has been assessed by the Doctor (R.W.2) and the same accepted by the trial court?

2. Whether the Deputy Commissioner of Labour - II is right in not awarding interest at the rate of 12% p.a. from the date of accident under Section 4A (3) of W.C. Act, while the award passed on merit?"

on the ground that the authority ought to have accepted the assessment of the disability by R.W.2 in the absence of contra evidence and ought to have assessed the disability of the appellant as 45% instead of 35% and ought to have awarded interest at the rate of 12% per annum from the date of accident till the date of repayment.

2. The case of the appellant is that he was working as a cleaner with the first respondent and was earning Rs.180/- as daily wages. On 12.01.2005, around 3.00 a.m, while travelling as a cleaner in TATA 407 van bearing Registration No. TN 07 T 2530, belonging to the first respondent in G.S.T. Road, near Tondiar Bridge, Villupuram District, it accidentally collided with TATA Sumo van bearing Registration No. TN 32B 2224 as well as Taurus Lorry TN 28J 0658. Due to the said accident, the petitioner has sustained severe injuries, wherein his fore head and nasal bone got fractured and lost his tooth at lower jaw and sustained facial injury and ruture of ligament in right knee, contusion in left knee and other injuries. The petitioner has taken treatment at Government Hospital, Villupuram and at Government Royapettah Hospital and also taken country treatment at Puthur for setting his bones, for three months. Due to the said accident, the petitioner has sustained permanent disability and not able to do any work as earlier and even the cleaner work he was not able to do and he has lost his capacity to earn, which has to be taken as 100%.

3. The appellant would further submit that the first respondent has taken insurance policy with the second respondent, which is valid from 19.11.2004 to 18.11.2005. As the first respondent is the owner and the second respondent as the insurer, liable to pay the compensation to the petitioner and filed the claim petition before the said authority by marking eight documents.

4. In the Objection filed by the second respondent, wherein they denied all the averments of the appellant and had submitted that the appellant was travelling as a gratuitous passenger in the goods van and he cannot be termed as a 'workman' within the provisions of the Workmen's Compensation Act, and the second respondent is not liable to pay the compensation to the appellant and his vehicle owner alone is liable to pay the compensation. They also denied the percentage of injury and also submit that the appellant has to prove that he has lost the earning power to 100% and no medical certificate has been produced to such effect and also prayed to direct the applicant to appear before the Medical Board to quantify the compensation.

5. The Labour Commissioner has considered the various aspects and in his order and he has fixed the compensation as

Rs.1,56,122/- taking the disability factor as 35% based on the Doctor's certificate. P.W.2, Dr. Thiagarajan, while giving evidence, has deposed that on 29.06.2009, he has examined the said appellant and he found that due to the said accident, the appellant had swelling in his brain and for that 10% has been fixed as disability and for losing his tooth, 5% has been fixed and for the injuries sustained in the leg, he has quantified 30% and totally he has awarded 45% as permanent disability and has filed Exs.P7 and P8. In the cross examination, P.W.2, Dr. Thiagarajan, has accepted that he was not the Doctor who has given treatment to the appellant and he has not assessed the disability for nasal bone fracture and further stated that skull x-ray is to verify the fracture in skull and the said contusion part will not be shown in the skull x-ray and for considering the same, they have to take scan and further stated that the contusion in the head will not be seen in the x-ray report and for finding and arriving at a solution regarding the same, scan report is necessary. He has also submitted that other than the nasal bone fracture, there are no other fracture found in the body and he has accepted the suggestion that fixing of disability will vary from Doctor to Doctor to an extent of 5% and accordingly the labour commissioner has cut down 5% given with regard to the loss of tooth and has reduced 30% for injuries sustained in the leg has to 25% and has come to the conclusion that the appellant has sustained only 35% disability and calculated the loss as follows:

1.	Age of the petitioner at the time of accident.	:	27
2.	Age factor	:	213.57
3.	Monthly Income	:	Rs.3,481/-
4.	Loss of earning capacity	:	35%

Compensation : $60/100 * 213.57 * 3481 * 35/100 = \text{Rs.1,56,122/-}$

Accordingly, the authority has come to the conclusion that the second respondent is liable to pay the compensation, as the Insurance policy was in force from 19.11.2004 to 18.11.2005 and the accident was occurred on 12.01.2005.

6. On considering the submissions made by the parties, both concerned, and perusing the materials available on record, it is seen that the petitioner has let in evidence by examining the Doctor Thiagarajan, who has issued the disability certificate and from the said evidence / deposition of the Doctor, it is found that he has arrived at 45% disability and based on his evidence, the authority has concluded that 35% disability will be appropriate and fixed the compensation at Rs.1,56,122/- and

there is no other material shown by the appellant to prove that he has sustained the disability to the extent of 45% absolutely. The Doctor's opinion itself shows that the disability fixed will differ from Doctor to Doctor and hence a just and reasonable order has been passed by the authority, which this Court finds as appropriate and reasonable.

7. Hence, in view of the above facts and circumstances, the civil miscellaneous appeal fails and the same is dismissed. The questions of law raised by the appellant is decided against him and in favour of the respondent. Consequently, the connected Miscellaneous Petition, if any, is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bga

To

1. Deputy Commissioner of Labour - II
(Commissioner for Workmen's Compensation - II),
Chennai 600 006.
2. The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr.J.Chandran, Advocate, S.R.No.77314

+lcc to Mr.A.Shanmugaraj, Advocate, S.R.No.77638

C.M.A.No.18 of 2011

SV(CO)

CS/31/10/2019

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