

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.12.2018

Delivered on : 15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1644 of 2015

M. Periyasamy, ... Appellant/Applicant

-Vs-

1. N. Subramaniam,

2.M/s. United India Insurance Company Ltd,
No.2, Dr.Sankaran Road,
Namakkal. ... Respondents

{Since quantum alone is disputed, hence notice
may be dispensed with for the respondent in this
Appeal}

Appeal filed under Section 30 of the Workmen
Compensation Act, against the award dated 12.08.2013 made
in W.C.No.147 of 2011 on the file of the Deputy
Commissioner of Labour, Salem.

For Appellant : Mr.Ma.Pa.Thanagavel

For Respondents: Mr.T.Ravichandran (for R2)

J U D G M E N T

The appellant herein is the injured applicant seeking
for enhancement of compensation.

2. The Injured was employed as a Co-driver in a Lorry
bearing Registration No. KA-01-B-5986 belonging to the
first opposite party/first respondent on a monthly salary
of Rs. 7,000/-. On 07.10.2010, at about 03.00 AM while the
injured was travelling in the lorry as co-driver, near
Grivanahalli Petrol Pump, Tumkur to Bangalore NH-4 main
road at Karnataka State, the driver of the said lorry
suddenly hit behind the another lorry bearing registration
No. KA-01-B-5986, due to the accident the appellant
sustained grievous injuries and multiple fractures
resulting which amputation of left leg below knee. The
applicant stated that the said accident took place during

the course of employment and claimed compensation from the second respondent/Insurance Company, being the insurer of the offending vehicle.

3.The Deputy Commissioner, Labour Commissioner at Salem, after considering the case on its own merits, had awarded a sum of Rs.3,56,793/- as compensation, being in adequate quantum the present appeal is filed.

4.Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent and perused the material available on record.

5.It is stated that it is not in dispute that the deceased was employed as co driver with the first respondent and that the accident occurred during the course of employment. It is relevant to mention that though the second respondent has disputed the accident, but failed produce any contra evidence to disprove the same. Hence, the finding of the Commissioner that there was an accident on 07.10.2010 involving the vehicle belonging to the first respondent, existence of employer-employee relationship and existence of valid insurance policy at the time of accident. It is pertinent to note that the respondent have not preferred any appeal, hence the findings of commissioner with regard to liability is accepted and they satisfied with the award amount.

6.In so far as the compensation payable is concerned, the driving license of the injured, which was marked as Ex.P.11 shows that the injured was born on 20.05.1972, based on which, his age was assessed as 38 years. It is the specific case of the appellant is that, at the time of accident he was working as a driver and due to the accident he sustained grievous injury which leads to amputation of left leg and though the doctor PW-2 assessed disability of 65% but his earning capacity should be 100% and moreover the Commissioner has adopted the minimum wages payable for the accident happen in 2010 but applied the G.O.Ms.No.2D, No.64, Labour and Employment Department dated 23.07.2009 at Rs. 5,966/- and adopting 189.56 factor, based on the age, and a sum of Rs. 3,39,274/- has been awarded as total compensation including medical bills of Rs. 17,518.9/-. The present award is now under challenge.

7.The learned counsel appearing for the Insurance Company submits that award granted by Labour Commissioner is reasonable no need interference of this court and prays for dismissal.

8.The Substantial questions that arise for consideration here are:

"1. Whether the DCL, Salem is right in taking meager salary to Driver, instead of taking salary based on the Minimum Wages Act, in the accident which was happened on 07.10.2010?

2.Whether the DCL, Salem is right in not awarding 100% future earning capacity instead of 50% only awarded?"

3.Whether the Deputy Commissioner of Labour, Salem was right in not awarding interest at the rate of 12% per annum from the date of accident ?.

9.The learned counsel for the appellant mainly canvassed his argument for enhancement of monthly wage and submits that, here the accident happened on 07.10.2010, that is after the amendment of Employee Compensation Act dated 18.01.2010, after amendment in act irrespectively the minimum wage is should be fixed as Rs. 8,000/- and apart from other perks pray for enhancement. From the record it shows that the Workmen's Compensation Commissioner determined the monthly income at Rs.5,966/- based on the Government Order issued under the Minimum Wages Act. However, as per Section 4(1-A) of the Workmen's Compensation Act, on the date of the accident, ceiling on wages fixed is Rs.8,000/- i.e., after amendment by virtue of introduction of Section 4(1B) of Workmen's Compensation Act. Therefore, instead of Rs. 5,966/-, this Court re-fixes the monthly income at Rs.8,000/- and the first question of law is answered in favour of the appellant.

10.The learned counsel for the appellant further argued that, the Doctor PW-2 was examined and he assessed disability of 65% and further submits that though the doctor assessed disability of 65% but the earning capacity of the appellant should be 100%, since due to accident the appellant suffered amputation of left leg, being driver amputation lead to loss of entire avocation and also relied judgment of apex court K.Janardhan -Vs- United India Ins Co Ltd., reported in 2008 (2) TNMAC 162 SC and S.Suresh -Vs- Oriental Insurance Co Ltd., reported in 2010 (1) TNMAC 253 SC and pray for fixing 100% earning capacity. From the

material of record it shows that the appellant suffered amputation of left leg below knee, moreover the judgment relied by counsel for appellant also squarely applicable to the facts and circumstances of this case moreover due to amputation of the appellant is unable to work as a driver and therefore, there is 100% loss of earning power by the appellant. Loss of earning power fixed at 50% by the Commissioner is enhanced to 100% and the second question of law is answered in favour of the appellant

11. In so far as factor is concerned the appellant age is 38 years and the relevant factor is 189.56 and the compensation payable to the appellant is worked out as [Rs. 8,000 X 60/100 x 189.56 x 100/100 = Rs. 9,09,888/- is awarded as compensation to the appellant and the commissioner awarded as sum of Rs. 17,518.99/- toward medical bills as per Ex.P-12 and the same is hereby confirmed. Hence, the award of the Commissioner is enhanced from Rs. 3,56,793/- to Rs. 9,27,407/- which is payable to the appellant/applicant by the Insurance Company. Thus, the question of law is answered in favour of the appellant.

12. In so far as payment of interest is concerned, the Deputy Commissioner of Labour, Salem, erred in awarding interest at the rate of 12% only if the Insurance Company failed to pay the award amount within 30 days from the date of receiving the order copy. However the learned counsel for appellants rightly pointed out that as per the recent decision of the Apex court reported in CDJ 2018 SC 112 (North East Karnataka Road Transport Corporation -VS- Sujatha), it is held that the appellants are entitled for interest at the rate of 12% from the date of accident.

13. From the judgment of apex court the legal position is now clear and this court also inclined to held that appellants are entitled for interest at the rate of 12% from the date of accident (i.e) from 07.11.2010, similarly the third question of law is answered in favour of the appellant.

14. With the above modification the appeal is partly allowed. No costs.

15. The 2nd respondent/Insurance Company is directed to deposit the entire compensation amount now awarded together

with interest at 12% p.a. thereon from the date of accident less the amount already deposited if any, within a period of six weeks from the date of receipt of copy of this order. On such deposit being made, the applicant are entitled to withdraw the same, less amounts already withdrawn, if any.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Commissioner for Workmen's Compensation,
(Deputy Commissioner of Labour),
Salem.

2. The Record Keeper,
V.R.Section, High Court, '
Madras.

+1cc to Mr.Ma.Pa.Thanagavel , Advocate SR.No. 24832

+1cc to Mr.T.Ravichandran , Advocate SR.No. 25065

C.M.A.No. 1644 of 2015

A.SK(28/05/2019)

सत्यमेव जयते
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