

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2662 of 2011
and M.P.No.1 of 2011

Bajaj Allianz General Insurance
Co., Ltd.,
No.1016, Ashoka Towers,
III Floor, Coimbatore Road,
Karur 639 001.

... Appellant/2nd Respondent

vs

1.Babu

2.Mohammed yasin ... Respondents/Petitioner & 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the award and decree of the Deputy Commissioner of Labour and Commissioner for Workmen's Compensation Tribunal, DCL, Coimbatore dated 13.01.2010 made in W.C.No.55 of 2008.

For Appellant : M/s.S.Arunkumar

J U D G M E N T

The appellant-Insurance Company is aggrieved by the impugned order dated 13.01.2010 passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Coimbatore in W.C.No.55 of 2008.

2. By the impugned order, the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Coimbatore has awarded a sum of Rs.2,82,926/- as compensation to the claimant / 1st respondent- auto driver.

3. It was the case of the first respondent/claimant that he suffered partial permanent disability in an accident on 21.12.2007 while driving the auto of the 2nd respondent as his employee and therefore he was entitled to compensation of

Rs.7,50,000/-.

4. In the said proceedings, the appellant herein filed objections stating that they cannot be made liable to pay compensation. The Deputy Commissioner of Labour, Coimbatore after considering the evidence on record particularly the disability certificate vide Ex.P.7 and evidence of P.W.1 has concluded that the 1st respondent suffered at 74% disability and was incapable of driving auto any longer. Therefore the Deputy Commissioner of Labour has awarded the following compensation as detailed below:-

Pay	:	Rs.3,304.55
Age	:	32
Age Factor	:	203.85
Loss of Earning Capacity:		70%
Compensation	:	$3,304.55 \times 60/100 \times$ $203.85 \times 70/100 =$ Rs.2,82,926/-

5. It is contended by the learned counsel for the appellant that the compensation awarded by the Deputy Commissioner of Labour was contrary to the Schedule II Part 4 to the Workmen Compensation Act, 1923.

6. According to the appellant, in case amputation, the Deputy Commissioner of Labour ought to have considered only 60% and not 70% disability and therefore the order passed by the Deputy Commissioner of Labour, Coimbatore was liable to be interfered.

7. It is the contention of the appellant that the assessment of P.W.2-Doctor was not in accordance with accepted medical norms and under similar circumstances the Court has rejected the claims following the Judgment of the Hon'ble Supreme Court reported in *Urumees and Others vs. State of Kerala and Others* 1998(8) SCC 401 and another decision of this Court reported in *A.Mohan vs. K. Gunasekaran and other*, 2003 (1) LW 81.

8. Heard the learned counsel for the appellant. There is no representation on behalf of the 1st respondent. I have also perused the order of the Commissioner for Workmen's Compensation - I, (Deputy Commissioner of Labour - I)

Coimbatore and perused the records.

9. At the time of admission, this Court has framed the following substantial questions of law for consideration:-

1) Whether the Commissioner of Labour can award compensation to person not coming under the purview of Workman as defined under Sec.2(n) of the Act?

2) Whether the Commissioner of Labour was correct in holding that the appellant is liable to pay compensation for the injury occurring outside the purview of Sec.3(1)?

3) Whether the Deputy Commissioner of Labour was correct in applying S.147 (b)(i) of the M.V.Act, when admittedly no documentary evidence to prove that the first respondent was on wheel at the time of alleged occurrence?

4) Whether the Commissioner of Labour erred in coming to the conclusion that the first respondent has sustained loss of earning power contrary to the provisions of 4(i)(c)(ii) of the Act?

10. This is a peculiar case where apart from the amputation of right hand wrist resulting in permanent loss of earning capacity, the evidence of P.W.2 and Ex.P.7 - Disability Certificate, shows the nature of injury. The Deputy Commissioner of Labour has also confirmed that the disability has been assessed 70% based on the evidence of P.W.2-Doctor and Ex.P.7-Disability Certificate. In his evidence P.W.2 has also deposed that there was multiple injury not only resulting in amputation of the right hand wrist but also fracture of right hand and there was a reduction in movement of right hand shoulder and elbow. Therefore, the compensation awarded by the Deputy Commissioner of Labour, cannot be interfered as it is not a case of mere amputation. Though the authorities have to apply the criteria as per Sl.No.4, Schedule (II) r/w 21& (iv) of the Workmen Compensation Act, 1923, this is a fit case for awarding higher compensation to the 1st respondent as there was multiple injury.

11. Consequently, I do not find any merits in the present appeal. The order of the Deputy Commissioner of Labour is well reasoned and requires no interference.

12. In view of the above discussion, the substantial questions of law framed is answered against the appellant. Therefore, the present civil miscellaneous appeal is liable to be dismissed and is hereby dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

kkd

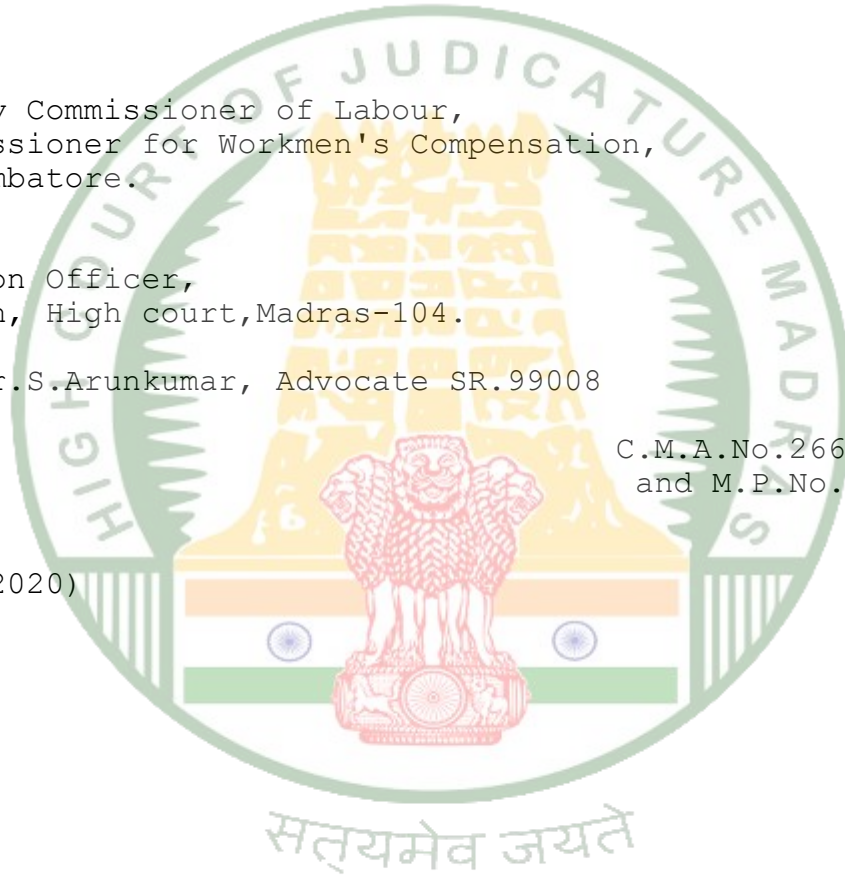
To
The Deputy Commissioner of Labour,
and commissioner for Workmen's Compensation,
DCL, Coimbatore.

Copy to:
The Section Officer,
VR Section, High court, Madras-104.

+1cc to Mr.S.Arunkumar, Advocate SR.99008

C.M.A.No.2662 of 2011
and M.P.No.1 of 2011

PA(CO)
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