

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.3167 of 2011 and M.P. No.1 of 2011

The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd.,
Rangapurm, Vellore District. .. Appellant

-vs-

1.Vedapuri (deceased)

2.Commissioner of Workmen's Compensation,
(Deputy Commissioner of Labour-I),
DMS compound,
Teynampet, Chennai-6.

3.Radhakrishnan

4.Girijaammal Respondents

(R3 and R4, the legal representatives of the
deceased first respondent are brought on
record vide Court order dated 26.08.2019
made in C.M.P. No.10113 of 2019)

Prayer: Civil Miscellaneous Appeal filed under Section 30 of
Workmen's Compensation Act, 1923 against the Award in W.C. No.42
of 2006 dated 02.01.2011 on the file of the second respondent.

For Appellant : Mr.S.V.Vasanthakumar

For Respondents : Mr.A.Rajendran for R3 and R4

JUDGMENT

The Managing Director, Tamil Nadu State Transport
Corporation, (Villupuram) Ltd. has brought this appeal
challenging the correctness of the Award dated 02.01.2011 passed
in W.C. No.42 of 2006 by the Commissioner of Workmen's
Compensation, (Deputy Commissioner of Labour-I).

2.Learned counsel appearing for the appellant submitted that this Court, while entertaining the appeal, has framed the following substantial questions of law:

- 1.Whether the percentage of disability fixed by the lower authority without any disability certificate issued by competent medical board is sustainable.
- 2.Whether the lower authority has got power to fix the percentage of disability on its own without evidence by the competent medical practitioner is sustainable.

3.Learned counsel appearing for the appellant would submit that the Deputy Commissioner of Labour-I has passed the award without taking note of the fact that the driver of the lorry, owner of the lorry and the insurer of the lorry are necessary parties to the proceedings even as per the averments of the first respondent deceased. He would further submit that the claim of Rs.15,00,000/- as compensation is highly excessive and the same is without any basis. In the absence of any disability certificate from the competent medical board, the Deputy Commissioner of Labour-I has assessed the disability at 100% which is not legally sustainable. Learned counsel appearing for the appellant would further submit that the Deputy Commissioner has erroneously fixed the monthly income of the workman at Rs.3,947/- per month without any documentary proof and the same is also not legally sustainable in law. Therefore, the learned counsel for the appellant prays for setting aside the Award passed by the Deputy Commissioner of Labour.

4.Learned counsel appearing for respondents 1, 3 and 4 would submit that during the pendency of the appeal, the injured Vedapuri, the first respondent died and therefore, respondents 3 and 4, who are father and mother of the deceased are brought on record.

5.Learned counsel appearing for respondents 1, 3 and 4 would further submit that when the first respondent, who was the driver of the TNSTC bus bearing registration No.TN 23 N 1222, driven the said bus on 11.09.2005 at M.C. Road towards Vellore at about 14.35 a.m., while he was coming from West to East, near Karagambathur Perumal Nagar, a lorry bearing Registration No.TN 04 D 0890 coming from Opposite direction, collided with the bus and caused the accident. Due to the said accident, the first respondent suffered extensive injuries all over the body and sustained grievous compound fracture in the right parietal bone and compound fracture in right tibia and fibula. Immediately, he was admitted in the C.M.C. Hospital, Vellore. Due to the said accident, his right leg and head was permanently disabled and he cannot do his driver job. Hence, he laid a claim petition for a

sum of Rs.15,00,000/- as compensation from the Transport Corporation. When the learned Deputy Commissioner, agreeing that the injured / driver of the bus belonging to the appellant, sustained grievous injuries during the course of employment and awarded a sum of Rs.4,77,571/- applying the following formula, the same does not call for interference.

வயது	33
காரணி	201.66
சம்பளம்	<u>ரூ.3947/-</u>
இயலாமை	100 %
இழப்பீடு	$3947 \times 201.66 \times 100/100 \times 60/100 = \text{Rs.4,77,571/-}$

6.A perusal of Exs.P.2, P.3 and P.4, wound certificates (Ortho and Neuro) and discharge summary issued by C.M.C. Hospital would show that the injured first respondent has sustained the following injuries:

10 x 2 c.m. Abrasion over right thigh
5 x 3 c.m. Laceration right proximal leg
compound fracture right tibia and fibula

Moving both upper limbs and left lower limbs restless
GCS: M5 EC VT=5TC/15; Bilateral black eye, Pupils right UMN fixed, left 2.5 mm reacting. Externally compound depressed fracture right parietal bone, nasal bleed present.

Right fronto - temporo - partial decompressive craniectomy, right anterior temporal caniectiony on 12.09.2005.

7.For the above grievous injuries, the injured has also taken treatment till his death. Therefore, the learned Deputy Commissioner has awarded a sum of Rs.4,77,571/- as compensation. In any event, the above compensation awarded by the Commissioner being very reasonable, this Court is not inclined to interfere with the impugned Award passed by him. Accordingly, the questions of law are answered against the appellant and the appeal fails and the same is dismissed. No costs. Consequently, connected M.P. is closed.

8.At this stage, learned counsel appearing for the appellant would submit that the learned Deputy Commissioner of Labour-I, Chennai has passed an award on 02.01.2011 directing the appellant Transport Corporation to deposit the amount of Rs.4,77,571/- within a period of thirty days from the date of receipt of a copy of the award, failing which the appellant is liable to pay simple interest at the rate of 12% per annum on the compensation amount from the date of accident till the date of deposit. In the light of the ratio laid down in the Larger Bench decision of the Hon'ble Supreme Court of India reported in

Pratap Narain Singh Deo v. Srinivas Sabata and another, 1976 (1) SCC 289 and Kerala State Electricity Board vs. Valsala.K, 2000 ACJ 5 (SC), interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/orders passed by the Commissioner for Workmens Compensation. Therefore, the claimants are entitled to get the interest for compensation amount only 30 days after the date of the accident.

9. Be that as it may. My effort has become easier in view of the two decisions, one decided by the Apex Court in the case of Pratap Narain Singh Deo v. Srinivas Sabata and another, (1976) 1 SCC 289 and another decided by the Hon'ble Division Bench of this Court in the case of N.Ganesan v. Thilagavathi and others, 2010 (2) TN MAC 80 (DB). The Larger Bench of the Apex Court, way back in the year 1976, has held that the employer became liable to pay the compensation as soon as the personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. Following the aforesaid Larger Bench decision of the Apex Court in Pratap Narain Singh Deo's case (cited supra), a Hon'ble Division Bench of this Court in the case of N.Ganesan v. Thilagavathi and others, 2010 (2) TN MAC 80, has held as follows:-

"20. The Hon'ble Supreme Court of India in the decision reported in Pratap Narain Singh Deo's case, 1976 (1) SCC 829 (Four Judges Bench), has specifically formulated an issue and held that "The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated 6.5.1969 under Section 19."

21. In Ved Prakash Garg v. Premi Devi and others, 1998 ACJ 1 (SC) (Two Judges Bench) the attention of the Hon'ble Supreme Court of India was not drawn to the Pratap Narain Singh Deo's case. However, the Hon'ble Supreme Court of India on the facts of the said case, held that "the Respondent-Insurance Company will be liable to pay the compensation with interest at 6% per annum thereon from the date of the accident till the date of payment to the claimants".

22. In a subsequent decision reported in 2000 ACJ page 5 (Three Judges Bench) (cited supra), the Hon'ble Supreme Court of India, has taken into consideration Pratap Narain Singh Deo's case and also the Judgment of the Full Bench of the Kerala High Court reported in United India Insurance Co. Ltd., v. Alavi 1998 ACJ 1048, and approved the view taken by the Kerala High Court and held that "the amount of compensation under Workmen's Compensation Act is payable on the date of accident and not the amount of compensation payable on account of the amendment made in 1995, which is relevant".

23. It is pertinent to point out at this juncture that the attention of the Hon'ble Supreme Court of India was not drawn to Pratap Narain Singh Deo's case and Kerala Electricity Board's case (cited supra) while rendering its verdict in the decisions reported in National Insurance Co.Ltd. v. Mubasir Ahmed and another, 2007 (1) TN MAC 214 : 2007 ACJ 845 and Kamala Chaturvedi v. National Insurance Co. & others, and in 2009 (1) TAC page 1. In the above said two decisions it has been held that "unless adjudication is done, the question of compensation becoming due does not arise and therefore, it cannot be the date of accident and it has to be taken to be the date of adjudication of the claim".

24. It is a settled position of law and as held by the Hon'ble Supreme Court of India in decisions reported in Union of India v. K.S.Subramanian, 1977 (1) LLJ 5 (SC) and State of Uttar Pradesh v. Ram Chandra, 1977 (1) LLJ 200, that "the proper course for a High Court is to try to find out and follow the opinions expressed by Larger Benches of the Supreme Court in preference to those expressed by smaller Benches of the Court".

25. By applying the above ratio, we are of the considered opinion that the attention of the Hon'ble Supreme Court of India was not drawn to the Larger Bench

decisions reported in Pratap Narain Singh Deo v. Srinivas Sabata and another, 1976 (1) SCC 289 and Kerala State Electricity Board v. Valsala K., 2000 ACJ 5 (SC) while deciding the cases reported in 2000 ACJ 845 and Kamala Chaturvedi v. National Insurance Co. and others, 2009 (1) TAC 1.

26. The learned Judge of this Court in the decision reported in Marimuthammal @ Marimuthu and another v. R.P.P.Construction (P) Ltd., Chennai and others, 2007 (2) TN MAC 98 : 2007 (5) MLJ 1059 and A.Chairmen v. A.Thirumeni & another, 2008 (1) TN MAC 38, after taking into consideration the above cited Larger Bench decision of the Hon'ble Supreme Court of India, has correctly held that "the interest on compensation is payable 30 days after the date of the accident in which workman sustained injuries resulting in death".

27. In the result, the reference is answered as follows:-

i. The word "falls due" occurring under Section 4-A of the Workmen's Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench decision of the Hon'ble Supreme Court of India reported in Pratap Narain Singh Deo v. Srinivas Sabata and another, 1976 (1) SCC 289 and Kerala State Electricity Board vs. Valsala.K, 2000 ACJ 5 (SC), means that interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/ orders passed by the Commissioner for Workmen-s Compensation. (emphasis supplied)

ii. The decisions rendered by the Single Bench of this Court in the decisions reported in Marimuthammal @ Marimuthu and Another v. R.P.P.Construction (P) Ltd., Chennai and others, 2007 (2) TN MAC 98 : 2007 (5) MLJ 1059; A.Chairmen v. A.Thirumeni & another, 2008 (1) TN MAC page 38 had laid down the correct proposition in consonance with the ratio laid down by the Larger Bench

of the Hon'ble Supreme Court of India in the above cited decisions."

10. In the light of the well settled legal position, this Court hereby directs the appellant Transport Corporation to deposit the interest at the rate of 12% per annum on the compensation awarded to the claimants after thirty days from the date of accident till the date of deposit to the credit of the W.C. No.42 of 2006 on the file of the Deputy Commissioner of Labour-I, Chennai within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, it is open to the claimants to withdraw the entire amount with accrued interest by moving appropriate application before the lower authority.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commissioner of Workmen's Compensation,
(Deputy Commissioner of Labour-I),
DMS compound,
Teynampet, Chennai-6.

+1 cc to M/s.S.V.Vasantha Kumar, Advocate Sr.No. 73257
+1 cc to M/s.A.Rajendiran, Advocate Sr.No.72934

AKM/31.10.19/7P-4C /

C.M.A. No.3167 of 2011
and M.P. No.1 of 2011

सत्यमेव जयते

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