IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2558 of 2015

R.Prakasam .. Appellant

vs.

1. M/s.A to Z Cargo Carieers,
   4/3 Shanmugapuram,
   8th Street, Thiruvettiyur,
   Chennai-19.

2. The New India Assurance Company Limited,
   45, Moore Street, Chennai. .. Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act against the Award dated 07.09.2015 made in W.C.No.243/2014 on the file of the Deputy Commissioner of Labour-II, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For 2nd respondent : Ms.S.R.Sumathy

R1 :Exparte before the Forum

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Award dated 07.09.2015 made in W.C.No.243/2014 on the file of the Deputy Commissioner of Labour-II, Chennai.

2. The appellant was engaged by the first respondent as Driver of the Container Lorry bearing Registration No.TN-03-K-1228 on a monthly salary of Rs.18,000/- and while he was on duty on 24.05.2014 at about 3.00 hours, the said vehicle met with an accident near Pillai Chathiram L&T Company in Bangalore to Chennai National Highway by dashing against yet another Container Lorry bearing Registration No.HR-74-7706, due to which he sustained multiple and grievous injuries all over his body, as a result, his left leg below knee was amputated. Therefore,

he filed a Claim petition before the Deputy Commissioner of Labour-II, Chennai in W.C.No.243 of 2014 claiming a compensation of Rs.25,00,000/- on the ground that the accident occurred during the course of his employment. The Deputy Commissioner of Labour-II, Chennai passed an award on 07.09.2015 directing the second respondent Insurance company, being the insurer of the Container Lorry bearing Registration No.TN-03-K-1228 owned by the first respondent, to deposit the compensation of Rs.9,92,714/-, within a period of thirty days from the date of receipt of a copy of the award, failing which the second respondent is liable to pay simple interest at the rate of 12% per annum on the compensation amount after 30 days from the date of accident till the date of deposit. Aggrieved over the same, the present appeal has been filed.

3. While admitting the above appeal by an order dated 01.03.2017, this Court has framed the following substantial questions of law:

a. Whether the learned Deputy Commissioner of Labour-II is right in fixing the loss of earning capacity as 90%? and

b. 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 excluding 30 days from the date of accident under Section 4(A) of the W.C. Act, while the award was passed on merits?

4. Learned Counsel appearing for the appellant submitted that firstly, when the interest at the rate of 12% shall occur from the 31st day from the date of accident which is automatic as per Section 4-A of the Workmen's Compensation Act, 1923, the learned Commissioner has mistakenly passed the Award giving liberty to the 2nd respondent that only in the event of failure to deposit the award, the interest would occur which is legally impermissible. Therefore, the same is liable to be set aside. Secondly, when the learned Commissioner has fixed the monthly income of the injured at Rs.9787/- as per G.O.(2D) No.91, Labour and Employment Exchange Department, dated 12.12.2013, wrongly restricted the same to Rs.8,000/- as per the old provision under Section 4 Explanation II of the Workmen's Compensation Act, 1923, thinking that the maximum sealing limit of the monthly remuneration should be taken as Rs.8000/-.

5. Further, the learned Counsel for the appellant straight away referring to the amended provision to Section 4 given under Explanation II of the Employee's Compensation Act w.e.f. 18.1.2010 deleting the previous sealing limit and making it unlimited stated that in this regard, even a notification also has been issued on 31.5.2010. This has not been properly appreciated by the learned Commissioner functioning as an authority under the Workmen's Compensation Act. When the poor

appellant has lost his left leg below knee, it would be highly impossible for him even to answer the natural call by visiting the rest room. But, the learned Commissioner ignoring the notification issued on 31.05.2010 removing the sealing from Rs.8000/-, once again fixed the monthly remuneration of the appellant at Rs.8,000/- although already determined the monthly remuneration of the appellant at Rs.9787/-.

6. Concluding his argument, the learned Counsel for the appellant submitted that when the appellant whose left leg was amputated below knee appeared before the Commissioner with one leg, although the Doctor has given a Disability Certificate stating 85% disability, he ought to have given 100% Disability Certificate whereas he has fixed only 90% as Disability/loss of earning capacity. It is unimaginable by anyone that how a person with one leg can attend any work including his own natural calls. Therefore, there is nothing wrong in awarding 100% towards loss of income. Therefore, on these grounds mentioned above, the learned Commissioner has committed serious error in awarding compensation and the same have to be rectified by allowing the present appeal, it is pleaded.

7. Ms.S.R.Sumathy, learned Counsel for the 2nd respondent opposing the above claim argued that the disability percentage/loss of income was correctly assessed by the Commissioner and there is no infirmity or illegality in the award passed by the learned Commissioner. The learned Counsel for the 2nd respondent further fairly submitted that when the learned Commissioner has held that the interest portion would occur only on account of failure on the part of the respondent from depositing the amount, the issue was taken up before this Court and this Court also has finally settled the issue holding that the interest portion at the rate of 12% payable on the awarded amount should occur from the 31st day from the accident. In support of the same, the learned Counsel for the 2nd respondent relied on a decision of the Hon'ble Supreme Court in Oriental Insurance Company Limited vs. Siby George and others reported in 2012 ACJ 2126.

8. Considered the rival submissions made on either side and I have also perused the materials available on record carefully.

9. At the outset, it is pertinent to mention that while following the ratio laid down by the Hon'ble Apex Court in Oriental Insurance Company Limited vs. Siby George and others reported in 2012 ACJ 2126, I have also held that interest on the award amount passed by the Commissioner working as Authority under the Workmen's Compensation Act is payable from 31st day from the date of accident. Therefore, the issue related to the

interest portion is answered on the basis of the judgment passed by me in CMA.Nos.35 and 128 of 2014 dated 03.11.2016. Hence, the 2nd respondent is liable to pay interest on the award amount to be notified from the 31st day of the accident till the date of deposit. Thus, the 2nd substantial question of law is answered in favour of the appellant.

10. It is not in dispute that the appellant herein having suffered an amputation on his left leg below knee in the accident said to have been taken place on 24.5.2014, was awarded a sum of Rs.7,71,077/- towards compensation by the Commissioner-II, an authority under the Workmen Compensation Act. Since the said Container Lorry bearing Registration No.TN-03-K-1228 was registered with the 2nd respondent Insurance company, the learned Deputy Commissioner of Labour after taking the age of the appellant at 42, income of the appellant at Rs.8,000/- and loss of income at 90% and thereafter by applying the factor 178.49 arrived at a sum of Rs.7,71,077/- towards compensation i.e. (60/100 for injury x 178.49 x 8000 x 90/100) and along with that by adding Rs.2,21,637/- towards Medical Bills, awarded a total compensation of Rs.9,92,714/- and also directed the 2nd respondent to pay the compensation amount of Rs.9,92,714/- to the appellant.

11. Now, coming to the reduction of the monthly remuneration from Rs.9787/- to Rs.8000/- as argued by the learned Counsel for the appellant, it is relevant to extract both the old provision and also the amended provision here under:

***''4. Amount of Compensation :(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:**

(a)	**Where death results from the injury**	**an amount equal to [fifty per cent] of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of [eighty thousand rupees] whichever is more;**
(b)	**Where permanent total disablement results from the injury**	**An amount equal to [sixty per cent] of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of [ninety thousand rupees], whichever is more.**

Section 4 Explanation II of the Workmen's Compensation Act, 1923:

Where the monthly wages of a workman exceed (four thousand rupees) his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be (four thousand rupees) only.''

It is also relevant to extract Section 4(1) (a)(b) and Explanation I and also Explanation (1-B) of the Employee's Compensation Act, 1923 here under:

''4. Amount of Compensation :(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:

(a)	Where death results from the injury	an amount equal to [fifty per cent] of the monthly wages of the deceased (employee) multiplied by the relevant factor; or an amount of [one lakh and twenty thousand rupees], whichever is more;
(b)	Where permanent total disablement results from the injury	An amount equal to [sixty per cent] of the monthly wages of the injured [employee] multiplied by the relevant factor, or an amount of [one lakh and forty thousand rupees], whichever is more.

[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b)]

Explanation I - For the purposes of clause (a) and clause (b), ''relevant factor'', in relation to a [employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the [employee] on his last birthday immediately preceding the date on which the compensation fell due.

Section [(1-B)] The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary)]''

A proper conjoint reading of both the provisions, namely, old and amended provision would clearly go to show that the Act has amended such provision on 18.01.2010 removing the outer sealing limit of Rs.4,000/- and a Notification also has been issued by the Central Government on 31.5.2010 fixing Rs.8,000/- as a notified amount. Therefore, the reduction from Rs.9787/- to Rs.8000/- is uncalled for. Accordingly, it is restored back to Rs.9787/-.

12. Coming to the last argument that the loss of earning capacity can be fixed at 100%, since the injured/appellant was aged about 42 years at the time of accident, sufficient evidence has not been produced before the Commissioner as to whether he got married or had any children or any dependents like elderly parents. But, it is an admitted case that while the appellant was working with the employer 1st respondent, he sustained multiple and grievous injuries, as a result, his left leg below knee was amputated due to which he lost his future. Ultimately, he cannot seek any employment from anywhere. Therefore, this Court has no hesitation to fix the loss of earning capacity as 100%. Accordingly, the loss of income is calculated as follows:

Age of the appellant at the time of accident	:	42
Multiplier	:	178.49
Monthly income	:	9787
Per centage of Disability	:	100%

(60/100 for injury x 178.49 x 9787 x 100/100)

Loss of income would come to Rs.10,48,129/- and by adding Rs.2,21,637/- towards medical bills, the total compensation amount comes to Rs.12,69,766/-.

13. Finally, it is submitted before this Court by the learned Counsel for the appellant that the earlier awarded compensation amount of Rs.7,71,077/- without interest was deposited. Therefore, interest at the rate of 12% on Rs.12,69,766/- shall be paid from the 31st date of accident. Since Rs.7,71,077/- has already been paid after deducting the said amount balance compensation amount shall be deposited along with interest within a period of four weeks from the date of receipt of a copy of this Order. It is needless to state that the interest shall be calculated as mentioned above and the entire balance amount shall be paid. On such deposit, the appellant is permitted to withdraw the entire amount.

14. With the above modification, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar
Dated:28/08/2019

*Modified as per order dated
30/08/2019 made in CMA 2558 of 2015
Sd/-
Assistant Registrar
Dated:10/10/2019

//True Copy//

Sub Assistant Registrar

To

1. The the Deputy Commissioner of Labour-II, Chennai.

2. The Section Officer, V.R.Section, High Court, Madras.

3.The New India Assurance Company Ltd., 45, Moore street, Chennai.

To be substituted
The order already despatched on 29/08/2019

+1cc to Mr.M.Malar, Advocate Sr.54434

C.M.A.No.2558 of 2015

rj[co]
srg 28/08/2019
srg 10/10/2019