

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2540 of 2013

Mr.Bhoopalan

... Appellant

Versus

1.M/s.S.R.M. Engineering Construction Corporation Limited,
No.2 Veerasamy Street,
West Mamballam,
Chennai - 600 003.

[R1 remained ex-parte before the Forum]

2.United India Insurance Company Ltd.,
A5 & 6, II Floor,
Appasamy Towers,
New No.27, Shri Thiyagaraya Road,
(Near Old Nagesh Theater)
T. Nagar, Chennai - 600 017. ... Respondents

Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act 1923, to set aside the award dated 05.12.2012 passed in W.C.P.No.453 of 2010 on the file of the Deputy Commissioner of Labour-II, Chennai.

For Petitioner : Mrs.Subadra

For Respondents : Mr.J.Michael Vishvasam (for R2)
: Ex-parte (for R1)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against award dated 05.12.2012 made in W.C.No.453 of 2010 on the file of the Deputy Commissioner of Labour-II, Chennai.

2.The brief facts of the case which are necessary to decide the issue involved in this appeal are as follows:-

It is the case of the appellant that he was working under the first respondent's concern/S.R.M Medical College in Potheri, while so, on 30.03.2010 at about 4.50 pm., the appellant engaged in a fabric work in Lab Sheet -II. At that time, an L-angle fell down on the appellant, and he sustained multiple fractures and grievous injuries. Thereafter, he was admitted to the S.R.M. Hospital, Chennai, where he had taken treatment as in-patient from 30.03.2010 to 04.07.2010. According to him, at the time of accident, the first respondent

was having valid and effective insurance, insured with the second respondent/insurance company for any accidental injury that may occur during the course of the employment. Therefore, the appellant filed a Claim Petition before the Deputy Commissioner of Labour-II, Chennai, claiming a sum of Rs.6 lakhs as compensation to the respondents.

3.Denying the allegations, the second respondent/insurance company filed a counter affidavit and submitted that as per the terms and conditions of the insurance policy, the appellant is not covered under the policy and he is a temporary labour (Coolie). Further, the second respondent/insurance company has stated that the appellant is not a 'workman' within the meaning of Section 2(n) of the Workmen's Compensation Act, 1923, and also denied that all the details furnished by the appellant is not true. Hence, the second respondent/insurance company prayed for dismissal of the claim petition before the Deputy Commissioner of Labour-II, Chennai.

4.In order to prove the claim, the claimant examined himself as PW.1. Besides one Dr.Thiyagarajan was examined as PW.2 and Ex.P1 to P8 have been marked. On the side of the respondents, neither oral nor documentary evidence was produced.

5.After considering the pleadings, oral and documentary evidence, the Deputy Commissioner of Labour-II, Chennai allowed the claim petition in favour of the claimant and awarded a sum of Rs.3,07,342/- as compensation to be paid by the second respondent/insurance company. Not being satisfied with award, the claimant/appellant has preferred this appeal raising 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 45% where the doctor assessed the disability as 65%?
- b) Whether the Learned Deputy Commissioner of Labour-II, is right in not fixing the earning capacity as 100%?
- c) Whether the Learned 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 Sec.4(A) of the W.C. Act, while the award was passed in merits?

6.The Deputy Commissioner of Labour-II, Chennai, by considering the evidence of P.W.2-Doctor, has fixed the disability suffered by the claimant as 45%. At the time of injury, the claimant was 25 years old and therefore fixing a sum of Rs.5,214/- as monthly income of the claimant/injured and taking the factor ratio of 216.91, awarded a sum of Rs.3,07,342/- as follows:-

Age	25
Factor	216.91
Monthly income	Rs.5,214/-
Loss of earning power	45%
Compensation	$60/100 \times 216.91 \times 5,214 \times 45/100$ =Rs.3,05,362/-
Medical expenses	Rs.1,980/-
Total	Rs.3,07,342/-

7.The submission made by the learned counsel for the appellant is that the quantum of compensation awarded by the Deputy Commissioner of Labour-II, Chennai is not adequate; hence, proper enhancement has to be made in the amount awarded by the Deputy Commissioner Labour-II, Chennai.

8.But, according to the learned counsel for the second respondent-Insurance Company, the Deputy Commissioner Labour-II, Chennai has awarded adequate compensation to the claimant and under such circumstances, there is no need for further enhancement of compensation.

9.Keeping the submissions made on either side, I have carefully gone through the materials available on record.

10.From a perusal of the evidence of P.W.1-Claimant, it is seen that the appellant/claimant had lost his stiffness in his back and thereby his movements are restricted. He also deposed that he is having pain due to the fracture on D12 and a fracture on his right toe. The claimant/appellant has lost his spinal flexibility and he could not bend and stand without using the belt. The Doctor, PW2, assessed his disability at 65%. However, the Deputy Commissioner of Labour-II, Chennai has rightly taken the percentage of disability at 45% which, in my view is proper. Considering the nature of the injuries sustained by the appellant/claimant, it is evident that he would find it difficult to do his normal work as he was doing before the accident. The Deputy Commissioner of Labour-II, Chennai has taken the income of the claimant at Rs.3,104/- as basic pay and Rs.695.50 as dearness allowance and fixed his monthly income at Rs.5,214/-, which is too meagre considering the nature of injuries sustained by him. According to the appellant, he was earning Rs.9,000/- per month under the first respondent as Fabric worker, however, he has not produced any documentary evidence to support the same. In any event, even in the absence of any documentary evidence, taking note of the fact that the accident had occurred 30.03.2010 and the age of the appellant, this Court is of the view that the appellant could have earned atleast Rs.8,000/- per month as salary. This is also in consonance with the minimum salary paid by the Central Government to it's workers at the relevant point of time. Hence, this Court feels that the notional income of the appellant can be fixed as Rs.8,000/- and accordingly a sum of Rs.8,000/- is taken as his monthly income. The compensation

awarded by the Deputy Commissioner of Labour-II, Chennai are confirmed in all other aspects. Consequently, the award amount of Rs.3,07,342/- awarded by the Deputy Commissioner of Labour-II, Chennai is hereby modified and enhanced to Rs.4,70,510/-. Break up details of the modified and enhanced compensation amount are as follows:-

Age	25
Factor	216.91
Monthly income	Rs.8,000/-
Loss of earning power	45%
Compensation	$60/100 \times 8000 \times 216.91 \times 45/100$ =Rs.4,68,525.6/- (round off is Rs. 4,68,530/-)
Medical expenses	Rs.1,980/-
Total	Rs.4,70,510/-

12.In the result,

(i) the Civil Miscellaneous Appeal is allowed.

(ii) It is represented that the entire award amount, as awarded by the Tribunal has already been deposited by the second respondent. Hence, the second respondent is directed to deposit the enhanced amount as determined in this appeal together with interest at the rate of 12% from the date of the accident within a period of 30 days from the date of receipt of a copy of this Judgment viz., excluding 30 days from the date of accident.

(iii) On such deposit, the claimant has to pay the necessary court fee for the enhanced amount.

(iv) The claimant is permitted to withdraw the enhanced award amount of Rs.4,70,510/-, with 12% interest and costs, after deducting the amount that has already been withdrawn by him, if any.

(v) there shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

klt

To

The Deputy Commissioner of Labour-II, Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to M/s.M.Malar , Advocate SR.No. 95879

<https://hcservices.ecourts.gov.in/hcservices/>

+1cc to Mr.J.Michael Vishvasam , Advocate SR.No. 94977

C.M.A.No.2540 of 2013

A.SK(11/02/2020)