

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.199 of 2016

Rajesh

... Petitioner

Vs.

1.Parthasarathy

(R1 remained ex-parte before the Tribunal
hence his presence may be dispensed with)

2.The United India Insurance Company Limited,
Divisional Office,
No.73-C,MTH Road,
Ambathur, Chennai - 53.

...Respondent

Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act to set aside the award dated 25.03.2014, made in W.C.NO.P.No.523 of 2010, on the file of the Deputy Commissioner of Labour - II, Chennai.

For Petitioner : Mrs.A.Subadra
for Mr.Terry Chella Raja

For R1 : Ex-parte

For R2 : Mr.S.P.Sankaranarayanan

ORDER

This Civil Miscellaneous Appeal has been preferred by claimant against the judgment and decree made in W.C.No.523 of 2010, dated 25.03.2014, on the file of the Deputy Commissioner of Labour - II, Chennai.

2. The claimant/injured is the appellant herein, who has preferred the appeal for enhancement of compensation awarded by the Tribunal.

3. The brief case leading to the claim application is as follows:

The appellant herein/claimant was working as a loadman under the first respondent's load auto. On 12.04.2010 at 04.00

p.m., the claimant was travelling in first respondent's load auto bearing registration No.TN-05-S-0186, near Eswaran Temple, Old Alamathi, at that time, the driver of the load auto drove the auto in a rash and negligent manner upset the load auto and due to which, accident had taken place and the claimant sustained grievous injuries and he was admitted in Government Stanley Hospital at Chennai - 1 and he was treated as an inpatient for two weeks. Therefore, he claimed Rs.10,00,000/- as compensation under various heads.

4. The second respondent/Insurance Company has denied the employment of the claimant and mode of accident. Further, he denied the sum claimed by the claimant/appellant herein for medical expenses and other related heads.

5. The Deputy Commissioner of Labour-II, Chennai, after considering the facts and circumstances of the case and analysing the evidence both oral and documentary, determined that the claimant has sustained 55% loss of earning capacity. Accordingly, the compensation has been calculated as follows:-

1)Age	:24
2)Relevant factor	:218.47
3)Salary	:Rs.5,550/-
4)Permanent Disability	:55%
5)Loss of earning capacity:	$60/100 \times 5,550 \times 218.47 \times 55/100 = \text{Rs.}4,11,127.80/-$

Rounded off to Rs.4,00,128/-

6. Not satisfied with the compensation amount, the appellant/claimant has filed this Appeal.

7. The learned counsel for the appellant submitted that the appellant was assessed with 65% disability by the doctor, however, the Commissioner of Labour-II, has fixed only 55% disability. The appellant cannot continue his avocation and not able to do any other work as earlier. The appellant who worked as coolie/Loadman cannot be expected to do his work after undergoing amputation in his hand and at such circumstances the Commissioner of Labour is not right in fixing the loss of earning capacity as 55% instead of 65%.

8. Per contra, the learned counsel appearing for the 2nd respondent/Insurance company submitted that the award of the Commissioner of Labour, is very much proper and reasonable and there is no need to interfere with the award.

9. Learned counsel for the appellant invited the attention of this court to Section 4 of Workmen's Compensation Act, 1923

and submits that in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity, as assessed by the qualified medical practitioner. He further submits that in view of amendment to Section 4(1-B)(2) of the Workmen Compensation Act, now the salary of the claimant has to be re-fixed as Rs.7000/- instead of Rs.5,550/- as fixed by the Deputy Commissioner of Labour.

10. In view of the above discussion, this court is inclined to modify the calculation in the following manner:-

1)Age	:	24
2)Relevant factor	:	218.47
3)Salary	:	Rs.7,000/-
4)Permanent Disability	:	65%
5)Loss of earning capacity	:	$60/100 \times 7,000/- \times 218.47 \times 65/100 = \text{Rs.}5,96,423/-$

Rounded off to Rs.6,00,000/-

Hence, the compensation is re-assessed and enhanced from Rs.4,00,128/- to Rs.6,00,000 /-.

11. As per the above, the claimant is entitled to Rs.6,00,000/- as modified compensation.

12. In the result:

(i) Civil Miscellaneous Appeal filed by the appellant herein/claimant is partly allowed. Except for the above modified compensation amount, the order passed in W.C.P.No.523 of 2010, on the file of the Deputy Commissioner of Labour - II, Chennai, is confirmed, in all other aspects.

(ii) The 2nd respondent-Insurance Company is directed to deposit the modified award amount as ordered by this court, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr.M.Malar, Advocate Sr.82842

+1cc to the Mr.S.P.Sankaranarayanan, Advocate Sr.82540

C.M.A.No.199 of 2016

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