

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2019

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.332 of 2018

G.Mohan

.... Appellant/Appellant

Vs

1. Sri Bhagyalakshmi Enterprises,
Proprietor Mr.D.Elangovan,
No.19, Vinayaga Nagar, Nemili Road,
Sreperumbudur, Kanchipuram District - 602 105.
2. ICICI Lombard General Insurance co. Ltd,
'Chottaboi Centre II & III Floor,
No.140, Nungambakkam High Road,
Chennai - 600 034. ..Respondents 1 & 2/Respondents 1 & 2

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923, against the order made in W.C.No.383 of 2011, dated 07.10.2016 (received on 21.12.2016), on the file of Deputy Commissioner of Labour - II (Commissioner for Workmen's Compensation - II), Chennai - 600 006.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mrs. R.Sreevidhya for R2
R1-Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed, against the order dated 07.10.2016 (received on 21.12.2016) made in W.C.No.383 of 2011, on the file of Deputy Commissioner of Labour - II (Commissioner for Workmen's Compensation - II), Chennai - 600 006.

2. The appellant herein had filed a claim petition under Section 4A of Workmen Compensation Act before the Commissioner for Workmen's Compensation -II, Chennai -6. It is the case of the appellant that he was working as a driver in the bus bearing Registration No.TN-21-AF-4358 belonging to Sri Bhagyalakshmi Enterprises owned by the first respondent herein and was drawing a salary of Rs.20,000/- per month. When the appellant was

driving the bus on 01.07.2014 around 7.00 a.m along Avadi-Poonamallee high road near Paruthipattu, wherein, SBI bank situated, the bus went out of control and hit against the lorry. Due to the accident, the appellant sustained grievous injuries and was admitted in SRMC Hospital as in-patient and continuing the treatment till today. At the time of accident, the petitioner was working under the first respondent and the said accident arose out of and in the course of employment under the first respondent. The appellant sustained severe injuries, resulted in permanent disability and he could not work as a driver . On the date of accident, he was 42 years only. The policy vide policy No.3004/72366410/02/000, would also state that the said bus is insured with the second respondent and it is valid for a period from 29.06.2014 to 28.06.2015. Due to his injury the appellant suffered permanent disability and the first respondent is liable to compensate for the same and the second respondent, as a insurer, is also liable to pay the compensation to the appellant on behalf of the first respondent. The appellant has sent a notice dated 28.08.2014 to first and second respondents claiming compensation for the disability caused to the appellant. However, the first and second respondents did not pay any money. Hence, the petitioner has filed a claim petition for a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) with interest at the rate of 12% per annum from the date of accident.

3. The first respondent did not file any counter, but the second respondent Insurance Company has filed a counter stating that they are denying the averments. The second respondent had submitted that alleged accident will not come under the definition of accident occurred in the course of employment as envisaged under the Workmen's Compensation Act and they are not liable to pay any amount as compensation. They also denied the accident itself and would submit that the accident had occurred only due to the rash and negligent driving of the petitioner, which will not attract the provisions of Workmen's Compensation Act.

4. The Commissioner of Labour, Teynampet has decided the issue on 07.10.2016 and awarded a sum of Rs.4,71,214/- as compensation to be paid by the second respondent. The Commissioner has also held that the Insurance policy was valid from 29.06.2014 to 28.06.2015 and the accident had occurred on 01.07.2014 and hence, the claimant is entitled to claim compensation from the second respondent. The Commissioner has also awarded a sum of Rs.49,464/- for the medical bills and as such, Rs.5,20,678/- was the total compensation awarded and directed the second respondent to deposit the same within a period 30 days from the date of receipt of a copy of the order.

5. Challenging the said award of Commissioner of Labour for Workmen's Compensation -II, Chennai -6, the appellant herein has filed this Civil Miscellaneous Appeal claiming that the Commissioner has failed to appreciate the permanent disability, which is 70%, but the Commissioner has taken the disability as 50% and calculated the compensation. The Commissioner of Labour has also not awarded interest at the rate of 12% from the date of accident as per W.C. Act. They also relied on judgment of Supreme Court in the cases of Pratap Narin Singh Deo Vs. Sreenivas Sabata and Anr. [reported in 1976 (1) SCC 289] and Kerala State Electricity Board Vs. Valsala.K and anr. [reported in (2000) ACJ 5] and as per the said judgment, 12% interest was awarded from the date of claim petition till the date of realization. Only if the 2nd respondent fails to deposit the amount within a period of 30 days from the date of receipt of copy that order. Hence, the appellant prays for enhancing the award amount with interest at 12% per annum.

6. The learned counsel for the appellant has raised the following substantial questions of law:-

"1) Whether the Deputy Commissioner of Labour -II (Commissioner for Workmen's Compensation - II) ought to have fixed the loss of earning capacity as 100%?

2) Whether the Deputy Commissioner of Labour -II (Commissioner for Workmen's Compensation -II) is right in not awarding interest at the rate of 12% p.a from the date of accident under Section 4(3) of W.C.Act, while the award pass on merit?"

7. The learned counsel for second respondent has produced a calculation memo today, from which it is seen that the award amount of Rs.5,20,678/- has been deposited on 03.01.2017. Now the respondents have calculated the interest from 01.08.2014 to 03.01.2017 i.e., interest has been calculated after 30 days from the date of accident i.e., 01.07.2014 and a sum of Rs.1,51,667/- has been arrived at.

8. The Commissioner of Labour has come to a conclusion that the petitioner's disability was taken as 55%, as the Doctor who has issued the certificate was not present and given evidence and the Doctor who has given the treatment had opined that there was no fracture in the body. The appellant has also renewed his driving license and accordingly the permanently disability has been fixed at 55%. There is no contra evidence produced before this Court to show that the petitioner has been suffering 100% disability and the Commissioner of Labour has wrongly fixed the same without any evidence.

9. From perusing the materials, the Commissioner of Labour has rightly decided the issue and had fixed the compensation to be paid to the appellant. Hence, this Court is not inclined to interfere with the quantum of amount awarded by the Commissioner of Labour for Workmen's Compensation -II, Chennai -6 and confirms the same except for modification regarding the interest component alone which he is entitled to receive and accordingly, the same has been calculated at Rs.1,51,667/- for 886 days (30 days from the date of accident) and the second respondent is liable to pay the same to the appellant herein within a period of four (4) weeks from the date of receipt of a copy of this order.

10. With the above observations, Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

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To

Deputy Commissioner of Labour - II
(Commissioner for Workmen's Compensation - II),
Chennai - 600 006.

+lcc to Mr.K.Varadha Kamaraj, Advocate, SR.No.77084.
+lcc to Ms.R.Srrevidhya, Advocate, SR.No.77214.

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CMA.No.332 of 2018

VBA (CO)
CSR(17/12/2019)

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