

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 16.12.2019
CORAM
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
C.M.A.No.448 of 2018

K.Sugumar

... Appellant/Petitioner

Vs.

1.R.Murthy

2.The New India Assurance Co. Ltd.,
No.6 - A, GST Road,
Chengalpet District.

3.The New India Assurance Co. Ltd.,
No.45, Moore Street, V - Floor,
T.P.Cell, Chennai - 600 001. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 against the Judgment and Decree made in W.C. Case No.416 of 2010 dated 18.01.2013 on the file of the Commissioner for Workmen Compensation - II at Chennai.

For Appellant : M/s.Anand and Suryas
For Respondents : Dr.R.Sampath Kumar for R1
Mr.C.Ramesh Babu for R2
R3 - Served

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed as against the Judgment and Decree made in Workmen's Compensation Case in W.C.No.416 of 2010, dated 18.01.2013, passed by the Commissioner of Workmen's Compensation - II at Chennai.

2.The following substantial questions of law are involved in this Civil Miscellaneous Appeal to be decided by this Court:

- i) The appellant / claimant was paid a sum of Rs.8,000/- per month as salary and there was no contra evidence by the respondents against the evidence of the appellant. In the absence of the same, his salary ought to have been taken as Rs.8,000/- per month.
- ii) The loss of earning capacity has been assessed by the expert doctors as 95%, but only 80% disability alone has been taken as disability without adducing any reasons. Further, even with 80% disability, the appellant cannot

continue his work as a driver and thereby, lost his avocation and livelihood. Therefore the disability suffered by the appellant is equal to 100% and the compensation has to be determined accordingly.

3.The case of the appellant / claimant is that he was working as a driver in lorry bearing Registration No.TN-21, X-9799 belonging to the first respondent for the past two years and was drawing a salary of Rs.8000/- per month and Rs.60/- as batta of per day, up to the date of accident. On the faithful date of accident, i.e., on 17.10.2005 around 01.00 PM, he was driving the sand lorry from Chengalpet to Chennai, while presiding on GST Road near Keezhkarunai X-Road, met with an accident with an ongoing lorry bearing Registration No. TN-04, 2877 and due to the said accident, the lorry capsized and the appellant sustained grievous and multiple injuries. This resulted in compound fracture of both bones in the left leg, loose bones excised, fibula osteotomized and 5 cms of bone excised in reveal partial level as a part of the level which was removed, which caused permanent disability to the appellant / claimant. Due to the said injuries, he is not able to drive any vehicle as he was working earlier to the accident and as he sustained injuries in the Course of his employment and out of his employment, which entitle's him to claim damages and compensation.

4.The owner of the vehicle, the first respondent, has not paid any compensation as per Section 8 of the Workmen's Compensation Act, inspite of repeated requests and demands, he failed to give notice under Section 10(b) of the said Act 8 to the concerned authorities. He also further submitted that the said lorry has been issued a insurance policy with the second respondent vide Policy No.712003/31/04/02081 which was valid till 18.02.2006 and they are liable to compensate him and prayed for awarding compensation of Rs.11,75,000/- (Rupees Eleven Lakhs Seventy Five Thousand only).

5.The first respondent filed a counter statement stating that the petitioner was not an employer under him, as he was only a substitute driver who works on leave vacancy and was not drawing a salary of Rs.8000/- per month. The appellant was given wages only for the work done on daily basis and the statement of the appellant in that regard is wrong and denied. He also submitted that on humanitarian grounds, they had paid Rs.40,000/- for Medical expenses and the appellant also agreed by giving an undertaking that he will not claim any other money against the first respondent, in the presence of two witnesses and he is not liable to pay any compensation.

6.The second respondent / Insurance Company had submitted that the lorry was purchased by the appellant / claimant only on 05.04.2005 and the averment that he was working as a driver for two years, is false. The notice issued by the appellant is after five years of occurrence of accident and it is not valid in law and the second respondent is not liable to pay any amount. The accident had occurred only due to the negligence and rashness on the part of the appellant and there is a contradiction regarding the cause for the accident and at one place, he has stated that to avoid a Baffalo he had to apply brake, but stated that he had sustained injuries due to an ongoing lorry and the second respondent / Insurance Company prayed that they are not liable to the compensation to the appellant / claimant.

7.The Commissioner of Labour, on perusing the materials on record, found that the appellant / claimant had marked Exs.1 to 17, but the respondents have neither marked any document, nor any witnesses were examined. The Labour Commissioner has given a finding that on 17.10.2005, the appellant / claimant had worked as a driver hence, he come under the definition of "Workman" and held that, on the date of the accident, he was a "Workman". The accident is arising at the time of his employment and the Commissioner of Labour decided in favour of the appellant.

8.Regarding the submission of the respondents that the appellant / claimant has renewed his license and so he do not have any disability, the same was not considered by the Commissioner, but a finding was given that the disability has been proved by the Doctor's evidence and as per the driving license, his age was fixed as 34 years. Based on the Minimum Wages Act, the Commissioner of Labour fixed his basic salary at Rs.3466/- and D.A Rs.481/- and total Rs.3947/- was taken as a salary and the compensation was accordingly arrived at. As per the Doctor Sukumar's evidence, the disability was abnormal blunch injury and surgeries have been done and a part of liver was removed and it became a permanent loss and hence, the Commissioner of Labour has held that the disability is 30% due to Cholecyslectomy, he has difficulty in digestion.

9.The other Doctor who had treated him has stated that due to the said accident, several surgeries have been performed and the knee could not be lifted beyond 90% and even in the right hand, there was a fracture and due to the same, his right hand movements are also restricted. He is not able to walk faster and not able to claim the stairs and all the bones were not joined properly and malunited and the Commissioner of Labour has considered the said factors of disability and fixed 65% as per the claimant who had marked proper documents accordingly, both

the Doctors have come to the conclusion that he has suffered 95% disability, but the Court below has fixed it at 80% and has awarded Rs.3,77,775/- (Rupees Three Lakhs Seventy Seven Thousand Seven Hundred and Seventy Five only) and the Commissioner of Labour directed the third respondent / Insurance Company to pay the same. The claimant has filed this appeal, not being satisfied with the compensation awarded and seeking for more compensation, based on the fixation of income by the Labour Commissioner, who had erroneously fixed the disability as 80%, when the Doctors have given a certificate at 95% and when the income is stated as Rs.8000/- per month and Rs.60/- per batta per day. There are no records were perused and has fixed the Minimum Wages Act and reduced the same and it has to be enhanced.

10.It is admitted that no documents were produced by the respondents regarding the salary and the first respondent has denied giving him any money as he is not even a permanent employer and only a person who helps in the absence of regular driver, i.e., the claimant comes as a substitute driver and hence, he will not be given the regular salary.

11.The learned counsel stated that for the driver in the Public Motor Transport based on Minimum Wages Act, his basic pay Rs.3466/- and DA was Rs.481/-, totally the salary was fixed at Rs.3947/- is the amount to be paid and the same has been rightly fixed by the Commissioner of Labour. It is also his case that based on Section 4 of the Workmen's Compensation Act the amount of Rs.4000/- has been fixed and accordingly, the amount was rightly fixed and from 2010, the same was enhanced, but as the Doctors who treated them was only the third party Doctor, who had actually treated him and hence the Doctors Certificate should not be taken into account while awarding compensation.

12.The learned counsel for the appellant / claimant claimed that he has to be paid interest from 30 days after the date of accident, and after 30 days, he is supposed to get 7% interest. The learned counsel for the 3rd respondent submitted that the claimant has filed this appeal after 5 years from the date of accident while the same occurred in 2005, but he had filed the claim petition only in the year 2010 and he is not eligible for getting any interest.

13.This Court has considered all the materials on record and it is found that there was no supporting documents produced by the appellant / claimant regarding his employment and also the salary paid to him. In the absence of any such material, the Commissioner of Labour has rightly held that he is entitled for getting minimum wages and accordingly, he has fixed the same based on appropriate method of calculation. Regarding the disability fixed the Doctors who have issued the disability

certificate was not the Doctors who had given treatment to the claimant and had only examined him on 17.10.2005. Based on the documents, he has fixed the said disability at 30%, when he has admitted and treated as patient only based on the Medical Records and he has given such treatment and the Commissioner of Labour has rightly held that 20% of the disability has been taken and regarding 65%, both has been considered and the disability was fixed at 80%, which this Court finds it to be correct and appropriate as there was no other evidence filed by the appellant / claimant to show that he has not gone for work, when it is found that he has also renewed his driving license.

14. In such circumstances, this Court is not inclined to interfere with the award passed by the Commissioner of Labour-II, Chennai and accordingly, this Civil Miscellaneous Appeal is dismissed. The second respondent insurance company is directed to deposit the entire award amount as fixed by the Commissioner of Labour-II, Chennai, with interest at the rate of 6.5% per annum (excluding the delay period in not filing the petition i.e. from 2005 to 2010) from the date of petition till the date of realization within a period of four weeks from the date of receipt of a copy of this Judgment. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

rna

To

1. The Commissioner for Workmen Compensation - II,
Chennai.

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

+1cc to Mr/s.Anand & Surya, Advocate, SR.No.104985.

C.M.A.No.448 of 2018

BR(CO)

CSR: 06.02.2020