

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No.143 of 2014

R. Elumalai

...Appellant/Petitioner

Vs

- 1 SRM Civil Works Private Limited,
No. 23, Venkatamangalam,
Chengalpattu Taluk,
Villupuram District - 607 204.
- 2 United India Insurance Company Limited,
A5 & A6, II Floor, No. 27,
Appasamy Towers,
Sir Thiyagaraya Road,
Near Nagesh Theatre, T. Nagar,
Chennai - 600 017. ..Respondents /Respondents

Civil Miscellaneous Petition is filed under Section 30 of the Workmen's Compensation Act to set aside the Award dated 31.12.2010 in W.C.No.114 of 2009 on the file of the Deputy Commissioner of Labour-II, Chennai.

For Appellant : Ms.Subatra
for Ms.M.Malar
For Respondents : Mr.J. Michael Visvasam for R2
R1-Exparte

JUDGMENT

This appeal has been filed by the claimant against the Award dated 31.12.2010 in W.C.No.114 of 2009 on the file of the Deputy Commissioner of Labour-II, Chennai.

2.It is the case of the applicant that he was employed by the 1st respondent as Construction Labour and at the time of accident, his age was 26 years and the monthly salary was Rs.9,000/- per month. On 10.09.2008 about 12.45 hours, while the appellant was working at SRM Engineering Company, Ponneri, he fell down from the 5th floor and sustained grievous injuries. Immediately, he was admitted in S.R.M. Hospital and taken treatment as inpatient and thereafter, as outpatient in the said

hospital. During the course of employment, the accident has occurred and hence, he has filed a case claiming a sum of Rs.6,00,000/- as compensation from the date of filing of the petition till the date of deposit.

3.The 2nd respondent/Insurance Company has opposed the claim petition contending inter alia that the appellant was only a temporary labour in the 1st respondent Company and there was no master and servant relationship. Hence, the appellant is not a "Workman", as defined in Section 2(m) of the Workmen's Compensation Act, 1923 and the claim petition is liable to be dismissed, as against the 2nd respondent. Further, no notice of claim as required under Section 10(1) of the Act has been served on the opposite parties. Hence, the claim is liable to be dismissed for circumventing the provisions of the Act. Hence, the 2nd respondent/Insurance Company is not liable to pay any compensation to the appellant and indemnify the 1st respondent. Without prejudice to the above, age, income and quantum of compensation claimed under various heads were also disputed.

4.On analysis of oral and documentary evidence adduced by both parties, the Deputy Commissioner of Labour -II, Chennai-6, has awarded a sum of Rs.2,58,336/- as compensation for the appellant. Aggrieved against the same, the appellant is before this Court.

5.The learned counsel for the appellant submitted that the Deputy Commissioner of Labour -II, Chennai, has fixed the loss of earning capacity as 50% instead of 100% without any basis. Further, the Deputy Commissioner of Labour -II has not awarded interest @ 12% per annum from the date of accident, however, awarded interest excluding 30 days from the date of accident under Section 4(A) of the Workmen's Compensation Act.

6.The appellant has raised the following Substantial Questions of Law for consideration:

"(a)Whether the learned Deputy Commissioner of Labour-II is right in fixing the loss of earning capacity as 50% where the doctor assessed the disability as 60%?

(b)Whether the Learned Deputy Commissioner of Labour-II, is right in not fixing the earning capacity as 100%?

(c)Whether the Deputy Commissioner of Labour-II, is right in not awarding interest at the rate of 12% per annum from the date of accident excluding 30days from the date of accident under Section 4(A) of the Workmen's Compensation Act, while the Award was passed in merits?"

7.The learned counsel for the 2nd respondent contended that the Deputy Commissioner of Labour-II, Chennai, has awarded interest @12% per annum from the date of accident excluding 30 days from the date of accident under Section 4A of the Workmen's Compensation Act and the policy does not prescribe the payment of interest and they are not liable to pay such interest. Therefore, the 2nd respondent seeks to dismiss the present appeal filed by the appellant.

8.Heard the learned counsel for the appellant and the 2nd respondent and perused the documents placed on on record.

9.From the order passed by the Court below, it is seen that since the FIR corroborates with the evidence of P.W.1, viz., the appellant, the Court below has rightly averred that there is employee-employer relationship between the appellant and the 1st respondent and the respondents have not refuted the same by producing any evidence. Further, taking note of Ex.P.3-Discharge Summary, the Court below has rightly fixed the age of the appellant as 26 years. Though the appellant has not produced any document to substantiate his monthly income, the Tribunal by considering the G.O.2D.No.19, dated 20.05.2011 has rightly fixed the minimum salary of the appellant as Rs.4,000/-, that apart, considering the Ex.P.8-Disability Certificate issued by the Doctor, who had assessed 60% disability, the Court below rightly fixed 50% disability to the appellant and correctly awarded a sum of Rs.2,58,335/-. Hence, this Court is not inclined to interfere with the said compensation. However, while awarding the said compensation, has directed the 2nd respondent to pay 12% interest only when the said compensation was not deposited within a period of 30 days from the date of receipt of a copy of the said order, alone, needs to be interfered with.

10.In view of the above, this Court is inclined to extract Section 4A(3) of the Employee's Compensation Act, 1923, wherein it is stated as follows:

"Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall,

(a)direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon @ 12% per annum, or such higher, rate not exceeding the maximum of the lending rates of any scheduled Bank as may be specified by the Central Government by notification in the official Gazette, on the amount due, and

(b)if in his opinion, there is no justification for the delay, direct that the employer shall, in

addition to the amount of the arrears and the interest thereon, pay a further sum not exceeding 50%, on such amount by way of penalty."

11. Apart from the above, when the claim petition was filed, notice was issued to the respondent and in the said notice, it has been clearly stated that the respondent must produce documents and witnesses to support the claim. In spite of receiving the notice, no parties have filed the said policy before the Deputy Commissioner of Labour-I, Chennai and the contention of the respondent that the policy does not prescribe payment of interest, cannot be accepted.

12. In view of the above reasonings and taking into consideration Section 4A(3) of the Employees Compensation Act, extracted supra, this Court is inclined to agree the issue raised by the learned counsel for the appellant and hereby directs the 2nd respondent to pay the compensation along with interest @12% per annum after thirty days from the date of accident. The interest @12% per annum has to be calculated and deposited to the credit of W.C.No.114 of 2009 on the file of the Deputy Commissioner of Labour-II, Chennai.

Accordingly, this appeal is partly allowed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

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

2. United India Insurance Company Limited,
A5 & A6, II Floor, No.27, Appasamy Towers,
Sir Thiyagaraya Road,
Near Nagesh Theatre,
T. Nagar, Chennai - 600 017.

+1 cc to M/s.M.Malar, Advocate Sr.No. 9243

+1 cc to M/s.Mr.J. Michael Visvasam ,Advocate Sr.No. 9205

C.M.A.No.143 of 2014

SAI (CO)

RMP (06/11/2019)