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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2713 of 2019

The New India Assurance Company Ltd.,
Branch Office
Second Floor, Ram Complex
No.29, Paramathi Road
Namakkal 637 001

..Appellant/3rd Opposite Party

-vs-

1. C.Kumar

2. The Manager
Shree Saran Transport Service
No.68, Park Road
Erode 638 003

3. C.Shanthi

4. J.Senthil

5. Manokaran

(R3 to R5 were set ex parte before
the lower Court)

.. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 18.02.2019 passed in E.C.No.52 of 2016 on the file of the Commissioner for Workmen's Compensation (in-charge), Coonoor.

For Appellant :: Mr.R.Sivakumar

JUDGMENT

This civil miscellaneous appeal is directed against the impugned award dated 18.2.2019 passed in E.C.No.52 of 2016 by the Commissioner for Workmen's Compensation (in-charge), Coonoor directing the New India Assurance Company Limited, the appellant herein to pay a sum of Rs.6,21,072/- towards compensation and a sum of Rs.9,02,742/- towards medical expenses, totalling to Rs.15,23,814/- along with interest at the rate of 12% per annum to the first respondent/claimant.



2. Learned counsel for the appellant-Insurance Company, assailing the impugned award, submitted that when the first respondent-claimant was working as Loadman with Shree Saran Transport Service, the second respondent herein and when there is no employee-employer relationship between the first respondent and Mrs.C.Shanthi, the third respondent herein, who is the owner of the lorry and the appellant being only the insurer of the vehicle, the claim petition itself is not maintainable before the Commissioner for Workmen's Compensation, Coonoor, whereas, the Commissioner has wrongly proceeded under the Workmen's Compensation Act and directed the compensation to be paid by the appellant-Insurance Company. He also submitted that the Commissioner for Workmen's Compensation has committed a serious error in fixing the loss of earning power of the first respondent at 75% without any basis, as a result, he has arrived at a sum of Rs.6,21,072/- as compensation. In addition thereto, he has also awarded a sum of Rs.9,02,742/- towards medical expenses without any basis. Therefore, the impugned award is liable to be interfered with.

3. But this Court, disagreeing with these two contentions, is unable to entertain the appeal, for the following reasons. The first respondent-claimant, being the only earning member in the family, has been taking care of his wife and two sons, who are entirely depending upon the income of the injured first respondent. He has also been, in addition to his wife and two sons, taking care of his age old father and mother who are also his dependants. When the first respondent along with Narayanan and Ranganathan, while the goods were transported in the lorry bearing Registration No.TN-33-L-5883 to be supplied to the fifth respondent on 24.3.2016, were unloading the goods (plywood) from the said lorry, when one of the plywoods slipped from the lorry, to avoid from being hit by the plywood, the first respondent accidentally fell down from the lorry and sustained head injuries. When the blood was oozing out from the centre of his head, neck bones were also crushed, as a result, he was taken to the hospital. Due to the cervical injury, the first respondent became unconscious and the whole body became unmovable including his upper and lower limbs. When he was taken to Ganga Hospital, one of the leading and reputed hospitals in Coimbatore, he was diagnosed with C6-C7 Bifacet dislocation with ASIA "A" neurology, as a result, he became bedridden. He also underwent a major surgery at the risk of his life. During the course of surgery, the procedure for C6 corpectomy, C5-C7 fusion and anterior stabilization were done. After the major surgery, he developed another complication that also made him difficult to breath due to leakage of fluid from the lungs, as a result, percutaneous tracheostomy was done on 29.3.2016. Thereafter, he was admitted in Sudha Institute of Medical Sciences, Erode as



in-patient for the complaint of paraparesis-post traumatic and uro sepsis and taken treatment from 29.4.2016 to 10.5.2016. Besides, he also developed another complication, namely, post traumatic quadiparesis, urinary tract infection and was treated in the said hospital from 5.6.2016 to 7.6.2016. The learned Commissioner, after considering the discharge summaries showing that the first respondent was taking treatment as an in-patient in Ganga Hospital, Coimbatore and in Sudha Institute of Medical Sciences, Erode, taking note of the fact that cervical bone was completely damaged and there was no support of central nervous system for the body, which is more essential for moving here and there, has assessed the loss of earning power of the first respondent at 75%. Therefore, this Court finds no infirmity in the said assessment.

4. Coming to the contention raised by the learned counsel for the appellant-Insurance Company that there was no relationship of employee-employer between the first and third respondent herein, the learned Commissioner, in unnumbered paragraph-6 at page 14 of his order has rightly held that the vehicle bearing Registration No.TN-33-L-5883 in which the plywoods were carried was insured with the appellant Insurance Company and the insurance coverage was also live from 16.7.2015 to 15.7.2016 during which period the accident had occurred, has rightly found that the Insurance Company should be made liable to pay the compensation to the first respondent injured. In view of the above finding, taking note of the fact that the injured suffered grievous injuries, this Court, being a Court of equity, is unable to go into hyper-technical issue. Hence, the contention raised by the learned counsel for the appellant on indemnification is also brushed aside. Accordingly, the award passed by the Commissioner for Workmen's Compensation, Coonoor is confirmed and the civil miscellaneous appeal stands dismissed. Consequently, C.M.P.No.13666 of 2019 is also dismissed. As it is stated that the entire compensation amount along with interest has been deposited before the lower Authority, the first respondent-claimant is entitled to withdraw the entire amount.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Commissioner for Workmen's Compensation (in-charge)
Coonoor

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+1cc to Mr.R.Sivakumar, Advocate SR.No.55291

C.M.A.No.2713 of 2019

NRL (CO)
GMY (16/08/2019)