

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.32 of 2014

Thanigaivel

... Appellant

Vs

1.The Project Executive,
Valliammal Society & SRM Institute,
Department of Construction,
Chennai - 33.

(R1 remained ex parte before the Forum)

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

Civil Miscellaneous Petition is filed under Section 30 of the Workmen's Compensation Act against the Award dated 03.12.2009 in W.C.No.242 of 2007 on the file of the Deputy Commissioner of Labour-I, Chennai.

For Appellant : Ms.M.Malar

For Respondents : Mr.J. Michael Visvasam for R2

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JUDGMENT

This appeal has been filed by the claimant against the Award dated 03.12.2009 in W.C.No.242 of 2007 on the file of the Deputy Commissioner of Labour-I, Chennai.

2.It is the case of the applicant that he was employed by the 1st respondent as Mason and at the time of accident, his age was 21 years and the monthly salary was Rs.8,000/- per month. On 02.08.2006 about 11.30 a.m., while the applicant was working at SRM IT Park building, he fell down from the 5th floor and sustained grievous injuries. Immediately, he was admitted in S.R.M. Hospital and taking treatment as inpatient from 02.08.2006 to 19.09.2006 and from 04.10.2008 to 16.10.2006 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 with interest @ 15% per annum from the date of filing of the case till the date of deposit.

3.The 2nd respondent Insurance Company has opposed the claim petition contending inter alia that the applicant has not impleaded the Contractor, who constructed the wall, as the necessary parties. Further, the 1st respondent had taken valid workmen compensation Insurance policy covering the workers including the applicant at the time of accident. Hence, the 2nd respondent Insurance Company is not liable to pay any compensation to the applicant 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 -1, Chennai-6, came to a conclusion that the 2nd respondent Insurance Company is directed to pay a sum of Rs.3,32,055/- as compensation to the applicant with interest @12% per annum from the date of petition till the date of realization.

5.The learned counsel for the appellant submitted that the Deputy Commissioner of Labour -1, Chennai, has fixed the loss of earning capacity as 62.5% instead of 100% without any basis. Further, the Deputy Commissioner of Labour -1 has not awarded interest @ 12% per annum from the date of accident excluding 30 days from the date of accident under Section 4(A) of the Workmen's Compensation Act.

6.The learned counsel for the respondent contended that the Deputy Commissioner of Labour-I, 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.

7.Section 4A(3) of the Employee's Compensation Act, 1923, states 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 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."

8.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 be produce documents and witnesses to support the claim. Inspite of getting 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, this Court is not inclined to accept the said contention and there is no challenge regarding the denial of paying interest.

Hence, this Court agrees the issue raised by the learned counsel for the appellant and directs the 2nd respondent to pay the compensation along with interest 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.242 of 2007 on the file of the Deputy Commissioner of Labour-1, Chennai. CMA allowed. No Costs.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

1.The Deputy Commissioner of Labour-I,
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.

+lcc to Mr.J.Michal Viswasam, Advocate, S.R.No.92058

+lcc to Mr.M.Malar, Advocate, S.R.No.92438

CMA.No.32 of 2014

CO/JP

adl/28.05.2020



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