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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN
Civil Miscellaneous Appeal No.4036 of 2019

Karthikeyan

... Appellant/Appellant

..vs..

1.Vijayakumar

(R1 was set exparte in the Trial Court)

2.IFFCO Toyko General Insurance Co. Ltd.,

No.138/2, II Floor,
L.M.R.Shopping Arcade,
Opp. To M.G.M. Theatre,
Namakkal 637001.

... Respondents/Respondents

Prayer: Appeal filed under Section 30 of Workmen Compensation Act, 1923, to enhance the award amount in W.C.No.164 of 2017 on the file of Commissioner, Employees' Compensation of Labour, Coonoor order dated 15.02.2019.

For Appellant : Mr. C.Thangaraju

For Respondents : Mr.J.Michael Viswasam for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant / claimant, to enhance the quantum of compensation awarded by the Commissioner, Employees' Compensation of Labour, Coonoor, order dated 15.02.2019.

2. The case of the appellant is that he was working as a driver in lorry belonging to the 1st respondent bearing Registration No.TN 30X6768. On 01.09.2016 at 3.30 p.m., near Vellore Association Petrol Bunk, at Namakkal-Vellore Road, when he cleaned after putting oil in the tipper lorry, suddenly, the rod came to equilibrium position causing the tipper lorry box fell on the hands of the appellant and he sustained grievous injuries, due to which fracture had happened. Thereafter, the appellant was admitted in the Government Hospital, and then shifted to Namakkal C.M.Hospital as inpatient. Due to this



accident, the appellant had sustained 25% permanent disability and permanent loss of income and the appellant could not perform the work of heavy vehicle driver. Further, the appellant is an employee under the 1st respondent, earning a sum of Rs.22,500/- per month including batta. The 2nd respondent is the insurer of the said vehicle. Therefore, the injured/appellant has filed a petition for compensation for a sum of Rs.10,00,000/-. As against the said claim, the Commissioner, Employees' Compensation of Labour, Coonoor has awarded for a sum of Rs.2,71,486/- as total compensation. Aggrieved over the same, the appellant has filed the Appeal to enhance the compensation.

3. Denying the averments of the appellant/ claimant, the 2nd respondent has filed a counter affidavit stating that there is no employer and employee relationship between the appellant and the 1st respondent / insurer and the said accident has taken place in the course of employment. The appellant was not working as a driver with the 1st respondent at the time of accident and there is no documentary evidence produced to show that he was driven on the particular day and no trip sheet, invoice bill and salary bills etc.,. He also denied that the insured vehicle was not involved in the accident and the alleged injuries were not caused due to the accident. If there is any violation, the same should be borne by the 1st respondent and not by the 2nd respondent and pray for dismissal of the same.

4. The Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Coonoor after considering the pleadings, counter affidavits and materials placed on record, has awarded a sum of Rs.2,58,336/- as compensation and a sum of Rs.13,150/- as Medical expense to the appellant / claimant. Aggrieved by the same, the appellant has come up with the appeal to enhance the compensation.

5. In the present appeal, the appellant has disputed the quantum of compensation that has been ordered. The appellant has raised the following substantial questions of law for consideration which reads as under:

'1. Whether the Commissioner is right in not taking the income of the injured/Karthikeyan at Rs.22,500/-?

2. Whether the commissioner is right in not arriving at the permanent disability at 100% instead fixed only 25 %?

3. Whether the Commissioner is right in not awarding interest on the amount spent through medical expenses?

6. The learned counsel for the appellant / claimant submitted that the award passed by Court below is too low. The



Commissioner has held an error in granting compensation by fixing the disability 25% and the level of income as only Rs.8,000/-. The said commissioner has not considered that the appellant was earning Rs.22,500/-per month and the same has not been taken into account. He further stated that the appellant has sustained 25% permanent disability due to fall of tipper lorry box and it is proved by the production of disability certificate issued by the competent authority viz Doctor and the Doctor stated that "He was doing Driver work at the time of accident. He cannot do heavy work. It is highly strainful to do the work using his Right Upper limb. These are all permanent disabilities and he is physically handicapped amounting to loss of functional capacity with permanent disability of 25%."

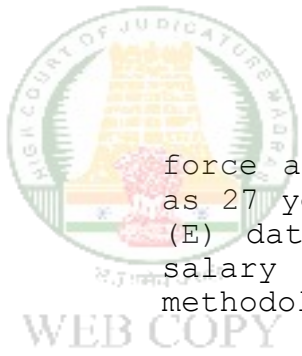
7. The appellant/injured is not in a position to undertake his avocation with the permanent disability. So the Tribunal ought to have taken the loss of earning power as 100% instead of 25% and the interest of medical expenses of Rs.13,150/- has to be added. At the time of accident, though it is pleaded by the appellant that he was drawing a salary of Rs.22,500/- Tribunal by taking into account the minimum wage for in the Workmen's Compensation Act under Section 4(1B) and G.O., S.O.No.1258 (E) dated 31.05.2010, has fixed salary Rs.8,000/-.The compensation awarded by the Tribunal does not commensurate with the injuries sustained by the appellant and needs substantial enhancement.

8. Per contra, the learned counsel for the second respondent / Insurance Company submitted that the award passed by the Tribunal perfectly matches with the settled principles of law and probabilities of the case and hence, interference on the same is uncalled for.

9. The learned counsel for the appellant in support of his submissions has relied on the following Judgements: (i) Judgement of Hon'ble Supreme Court in Jaya Biswa and others Vs. Branch Manager, IFFCO Tokio General Insurance Co.Ltd., and others reported in 2016(1)TN MAC 289(SC). (ii) Judgement of this Court in Prakasam Vs. A to Z Cargo Carriers and others, in C.M.A.No.2558 of 2015, dated 28.06.2019.

10. Heard the learned counsel for the appellant and the respondents and perused the materials available on records.

11. This Court is of the opinion that the compensation awarded by the Tribunal are reasonable, weight of evidence and based on settled principles because of the reasons that the Tribunal has rightly taken note of the fact that the insurance particulars given in the claim petition are not disputed by the second respondent and hence, it held that the insurance was in



force at the time of accident. Taking the age of the appellant as 27 years and based on the Section 4(1B) and G.O., S.O.No.1258 (E) dated 31.05.2010, the Workmen's Compensation Act has fixed salary Rs.8,000/- and rightly adopted the conventional methodology and awarded the compensation.

12.This Court finds some force in the submission of the learned counsel for the appellant, wherein he had submitted that the Court below has erred in not granting interest for the medical expenses, viz. Rs.13,150/-. This Court by taking note of the judgment referred by the learned counsel for the appellant cited supra viz."Judgement of this Court in Prakasam Vs. A to Z Cargo Carriers and others, in C.M.A.No.2558 of 2015, dated 28.06.2019." is inclined to award 12% interest on the medical expenses of Rs.13,150/- awarded by the Court below from the date of accident till the date of realisation.

13. Accordingly, the 2nd respondent / insurance company is directed to deposit the compensation amount of Rs.2,71,486/- with interest at the rate of 12% per annum, within a period of 4 weeks from the date of accident till the date of realisation, less the amount already deposited, if any. On such deposit, being made, the appellant is permitted to withdraw the same by filing a formal petition before the Court concerned, less the amount, if any, already withdrawn.

14. With the above modification, the Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To

- 1.The Commissioner for Workmen's Compensation,
The Deputy Commissioner of Labour,
Coonoor.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.



+1 cc to Mr.J.Michael Viswasam Advocate sr96410

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