

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3511 of 2019

G.Mani ... Appellant/Applicant

Vs.

1.M.Bhuvaneswari

2.The National Insurance Company Ltd.,
74-A, Paramathi Road,
Namakkal Town,
Namakkal District.

... Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 against the Order dated 24.07.2017 passed in W.C.No.949 of 2015, Old No.420 of 2015 on the file of Commissioner of Workmen's Compensation & Deputy Commissioner of Labour, Coonoor.

For Appellant : Mr.C.Thangaraju

For Respondents : Mrs.N.S.Surekha for R2
R1 - Served - No Appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed against Order dated 24.07.2017 passed in W.C.No.949 of 2015, Old No.420 of 2015 on the file of Commissioner of Workmen's Compensation & Deputy Commissioner of Labour, Coonoor.

2.The appellant is a driver under the 1st respondent and 2nd respondent is the insurer of the vehicle. The case of the appellant / claimant is that while he was working as a driver with the first respondent in a Trailer lorry bearing Registration No.TN-28/AF-3836 on 17.11.2012 around 05.00 P.M., the appellant had loaded the vehicle with Iron plates and when he opened the door of the lorry, at that time, two Iron plates had fallen down. The said accident had happened within Mahuli Police Station Limit, North Side Compound within the proceeding of Mahuli Police Station Limit. Due to the said accident, he had severe pain at lumbar region with restricted movement of lower limbs, with scotal swelling, cough, permanently and partially disabled. He was shifted to one Prakash Hospital for first-aid and later on, he was transferred to Sengupta Hospital, Nagpur, where he was

admitted for 30 days and spent more than Rs.3,50,000/- and he has to take further treatment, for taking care of his health. The said Mahuli Police Station had registered a complaint in General Diary No.29 of 2012. Due to the said accident, the appellant who was 52 years old and his the entire family had suffered a miserable life and he could not earn any income due to his disability. At the time of accident, he was earning a sum of Rs.9500/- per month, as salary, and Rs.100/- as batta per day.

3.It is the further case of the appellant that on account of the accident, the first respondent who was an employer has not come forward to pay any money, as settlement. The appellant, based on his income as well as taking into account the expenses incurred for treatment and his disability had claimed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation. As the accident had occurred only during the Course of employment, the first respondent as a owner of the said vehicle, and the second respondent, insurer of the said vehicle are liable to pay compensation to the appellant.

4.Earlier, when the appellant filed M.C.O.P.No.188 of 2012 before the Chief Judicial Magistrate Court, Namakkal, the same was not accepted and he was directed to file the petition before the appropriate Court and seek compensation under Workmen Compensation Act before the Competent forum on 23.12.2014. Hence, the appellant herein had filed the claim petition before the Commissioner of Labour, Coonoor in claim petition in W.C.No.949 of 2015.

5.The Notice was served on the respondents and the respondents 1 and 2 have not chosen to appear on 07.01.2016, 02.03.2016, 31.03.2016, 21.04.2016, 02.11.2016, 30.11.2016, 21.12.2016, 01.02.2017, 22.03.2017, 06.04.2017, 07.06.2017 after giving sufficient opportunity, the Commissioner of Labour, on 22.08.2017, had set them exparte and passed an order on 24.07.2017.

6.The said Commissioner, after considering the claim of the appellant, and after perusing the records, namely, FIR, and other 12 related documents, which has been marked, and after going through the Medical Records reports, which was received had come to a conclusion by fixing a sum of Rs.4,63,058/- (Rupees Four Lakhs Sixty Three Thousand and Fifty Eight only) including Medical expenses as compensation and 12% interest from the date of accident till the date of realization. Further, both the respondents were held liable and both of them were directed to pay the said sum jointly or severally within a period of 30 days from the date of receipt of a copy of that order.

7.The appellant has raised the following substantial questions of law and submitted that 50% penalty of the award amount has to be awarded:

- a) Whether the Commissioner is right in not taking the income of the injured Sivakumar at Rs.12,500/-?
- b) Whether the Commissioner is right in not arriving at the permanent disability at 100% instead fixed only 40%?
- c) Whether the Commissioner is right in not awarding interest on the amount spent through medical expenses?
- d) Whether the Commissioner is right in not awarding penalty at 50% of the award amount?"

8. Aggrieved by the said award, the appellant had filed this appeal, seeking to enhance the award passed in W.C.No.949 f 2015 dated 24.07.2017 by the Commissioner of Workmen's Compensation and Deputy Commissioner of Labour, Coonoor.

9. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the documents placed on record.

10. After hearing the parties, with regard to the income of the injured / appellant, this Court is of the view that there was no proof filed by the appellant that he was receiving Rs.9,500/- per month, as salary and Rs.100/- per day, as batta. Therefore, the Court below has taken the minimum wages and fixed the sum of Rs.6,401/- as salary and age factor has been considered and 40% disability was calculated and taking note of the Medical Expenses fixed a sum of Rs.4,63,058/- (Rupees Four Lakhs Sixty Three Thousand and Fifty Eight only) as compensation. It is pertinent to note that after the year 2010, the minimum wages has been increased from Rs.6,000/- to Rs.8,000/- by the Central Government, hence, in view of the same, a sum of Rs.8,000/- shall be taken into account and accordingly, a sum of Rs.8,000/- per month, is fixed as salary and the enhanced amount is calculated as follows:

$$\text{Rs.}8000 \times 60/100 \times 146.20 \times 40/100 = \text{Rs.}2,80,704/-$$

(Rupees Two Lakhs Eighty Thousand Seven Hundred and Four only)

11. In view of the above, after modifying the salary amount, the amount is awarded as Rs.2,80,704/- (Rupees Two Lakhs Eighty Thousand Seven Hundred and Four only) and Medical Expenses of Rs.2,38,460/- (Rupees Two Lakhs Thirty Eight Thousand Four Hundred and Sixty only). In total a sum of Rs.5,19,164/- (Rupees Five Lakhs Nineteen Thousand One Hundred and Sixty Four only) is awarded to the appellant.

12. In the result, the Civil Miscellaneous Appeal is allowed, only to the extent mentioned above and the respondents are directed to deposit the said sum along with the interest 12% from the date of filing the claim petition. The appellant had filed this appeal with the delay of 650 days

and hence the same has to be subtracted while calculating the interest for the enhanced amount.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

rna

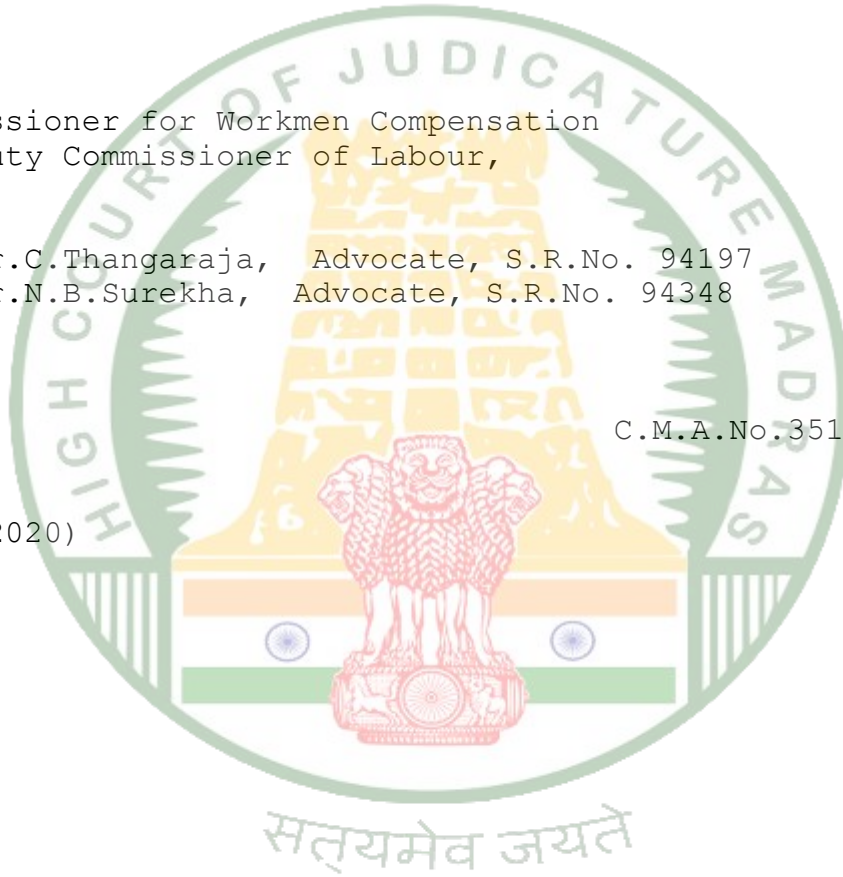
To

The Commissioner for Workmen Compensation
and Deputy Commissioner of Labour,
Coonoor.

+2cc to Mr.C.Thangaraja, Advocate, S.R.No. 94197
+1cc to Mr.N.B.Surekha, Advocate, S.R.No. 94348

C.M.A.No.3511 of 2019

AK (CO)
GN(08/01/2020)



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