

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.09.2019
Pronounced On	17.09.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2347 of 2004

&

C.M.A.No.3219 of 2006

and

C.M.P.No.5864 of 2005

&

C.M.P.No.10297 of 2006

C.M.A.No.2347 of 2004

R.Srinivasan

.. Appellant/Petitioner

vs

1.S.Gunasekaran

2.The Oriental Insurance Co.Ltd.,
Kamala Arcade,
II Floor, 669, Anna Salai,
Chennai - 600 006.

.. Respondents/Respondents 1 & 2

Prayer: Civil Miscellaneous Petition under Section 30 (A) of the Workmen's Compensation Act, 1923, to set aside the order dated 04.11.2003 in W.C.No.278 of 2001 on the file of the (Deputy Commissioner for Labour-I) Commissioner for Workmen's Compensation - I, Chennai - 600 006 and pass an award for a sum of Rs.1,00,942/- against the respondents payable by the second respondent with interest at the rate of 12% p.a from the date of accident.

For Appellant : Mr.A.Shanmugaraj

For R2 : Mr.R.Sivakumar

C.M.A.No.3219 of 2006

Oriental Insurance Co.Ltd.,
Kamala Arcade II Floor,
669, Anna Salai,
Chennai - 600 006.

.. Appellant/2nd Respondent

vs

1.R.Srinivasan

... 1st Respondent/Petitioner

2.S.Gunasekaran

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Petition under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 04.11.2003 passed in W.C.No.278 of 2001 on the file of the Commissioner for Workmen's Compensation - I, Chennai - 6 (Before the Deputy Commissioner of Labour-I, Chennai-6) received by the Appellant on 11.12.2003.

For Appellant : Mr.R.Sivakumar
For R1 : Mr.A.Shanmugaraj

C O M M O N J U D G M E N T

By this common order both the above appeals are being disposed.

2.By the impugned order, the Deputy Commissioner of Labour-I (Commissioner for Workmen's Compensation-I) has awarded a sum of Rs.1,00,942/- without interest to the claimant/appellant in C.M.A.No. 2347 of 2004. Interest at 12% from the date of accident has been ordered only if there is failure to deposit the aforesaid amount within 30 days from the date of the order.

3.Therefore, C.M.A.No.2347 of 2004 has been filed by the claimant claiming interest at the rate of 12% from the date of accident under Section 4A (3) of the Workmen's Compensation Act, 1923 as per the decisions of the Hon'ble Supreme Court rendered in Pratap Narain Singh Deo vs Srinivas Sapta and Another, AIR 1976 (SC) 222 and few other judgments.

4.The insurance company on the other hand has filed C.M.A.No.3219 of 2006 questioning the awarding of the

compensation on the ground that the injury sustained by the claimant was not a personal injury caused in the course of employment within the meaning of Section 3 of the Act.

5. In these appeals following substantial questions of law have been raised by the respective appellants:-

C.M.A.No.2437 of 2004	C.M.A.No.3219 of 2006
Whether the Deputy Commissioner for Labour - I (Commissioner for Workmen's Compensation - I) ought not to have awarded interest at the rate of 12% p.a., from the date of accident under Sec.4 A (3) of Workmen's Compensation Act, 1923 when the award was passed on merit?	1. Whether the learned Deputy Commissioner is correct in coming to the conclusion that the 1st respondent herein sustained injuries during the course of his employment under the 2nd respondent herein, when the 1st respondent sustained out injuries during a quarrel with a third party? 2. Whether the learned Deputy Commissioner is correct in coming to the conclusion that the loss of earning of the first respondent herein is 40% when the alleged cut injury is on fact of the 1st respondent herein? 3. Whether the Learned Deputy Commissioner is correct in assessing as per Schedule-I Part-II of the Workmen's Compensation Act. 4. Whether the Learned Deputy Commissioner is correct in fixing the monthly income of the first respondent at Rs.1834/- without any documentary evidence?

6. Briefly the facts relevant for the present cases are that on 16.08.1999, when the claimant (appellant in C.M.A.No.2347 of 2004) was driving his auto he noticed that another auto driver

was engaged in an argument with a passenger. The claimant tried intervening when a scuffle ensued and the passenger apparently injured the claimant with a knife on claimant's face.

7. Since the vehicle was insured with the insurance company (appellant in C.M.A.No.3219 of 2006), a claim petition was filed by the claimant (appellant in C.M.A.No.2347 of 2004) before the Deputy Commissioner of Labour-I (Commissioner for Workmen's Compensation-I) vide claim in W.C.No.278 of 2001 on 16.08.2001 exactly two years after the alleged incident.

8. In the proceedings before the Commissioner of Workmen's Compensation, the insurance company filed a counter disputing the accident and their liability. The insurance company also questioned the earning capacity of the claimant.

9. Before the Deputy Commissioner of Labour-I (Commissioner for Workmen's Compensation-I), the claimant filed following 12 exhibits:-

- Ex.P1 : Discharge summary of the Government General Hospital
- Ex.P2 : Copy of the Insurance Policy
- Ex.P3 : Letter of the Advocate
- Ex.P4 : Acknowledgement receipt of the 2nd respondent
- Ex.P5 : The letter of the Advocate sent to the 1st respondent.
- Ex.P6 : Reply letter of the 1st respondent.
- Ex.P7 : Copy of the Driving Licence.
- Ex.P8 : Copy of the FIR
- Ex.P9 : Final report of the Police
- Ex.10 : Photo and negative of the injury of the petitioner
- Ex.11 : Disability Certificate given by the doctor
- Ex.12 : X-ray

10. As mentioned above, by the impugned order a sum of Rs.1,00,942/- without interest was awarded to the claimant.

11. Aggrieved by the impugned order both the claimant and the insurance company have filed the respective appeals.

12. Heard the learned counsel for the respective appellant and the respondents. The learned counsel for the claimant (appellant in C.M.A.No.2347 of 2004) relied on the following decisions:-

- i. Golla Rajanna, etc. etc. vs The Divisional Manager and another, etc. etc., 2017 (1) TN MAC 1 (SC).
- ii. New India Assurance Co.Ltd. Vs Ponnammal and Others, 2005 ACJ 149.
- iii. The Management, Sree Lalithambika Enterprises, Salem vs Kailasam, 1980 ACJ 321.
- iv. Smt. Kavitha Dilip Patil vs Ananada Gnanu Patil, 2004 (1) TN MAC (Kar.) (Full Bench) 225.
- v. Oriental Insurance Co.Ltd vs Sheela Bai Jain, 2007 ACJ 1126.
- vi. Oriental Insurance Co.Ltd. Vs Thankappan and Others, 2006 ACJ 554.
- vii. Laxmi vs Jai Karan Prasad Shukla, 2007 (3) MPHT 421.
- viii. New India Assurance Co.Ltd vs Purnima Singha and Others, 2016 (4) GLR 734.
- ix. National Insurance Co.Ltd vs Presiding Officer, Labour Court, 2000 ACJ 343.
- x. Oriental Insurance Co.Ltd vs R.Mahalingam, 2012 (2) TN MAC 750.

13. The insurance company submitted that the injury sustained by the claimant was on account of unwarranted intervention by the claimant in a private dispute between the driver of another auto and his passenger and therefore such an injury sustained by the claimant in scuffle/fight between 3rd parties cannot be construed a personal injury in the course of employment within the meaning of section 3 of the Employee's Compensation Act, 1923. It was further submitted that the compensation awarded was in any event contrary to the Section 4(1)(C) read with Section 2 (1) of the Employee's Compensation Act, 1923.

14.It is stated that the claimant has not suffered either total disability or partial disability. It is further stated that the Ex.P 11 Disability Certificate of claimant does not state injury compromises earning capacity of the claimant and therefore, the impugned order passed by the Deputy Commissioner for Labour -I (Commissioner for Workmen's Compensation - I) is liable to be set aside.

15.It was further stated that the doctor who deposed as witness stated that the injury was caused on face of the claimant which in any manner, did not compromise earning capacity. The remarks of the doctor in the Disability Certificate reads as follows:-

- i. Mandible Lt.Side resulted in Muscular dysfunction causing deranged occlusion 20%
- ii.and Loss of Teeth resulting in (Lt.Lower 4 teeth) 15%
- iii.Martigaryery Dysfunction and Speech disturbance 10%

16.It was therefore submitted that awarding of the aforesaid amount of compensation was not proper as the injury caused to the claimant on his face did not in any manner compromise the claimant's earning capacity. The fixation of loss of earning capacity according to the insurance company at 45% was without any basis as evidently the PW 2 during cross examination has confirmed that the injury did not result in any disability impacting the earning capacity of the claimant.

17.Learned Counsel for the claimant relied on the decision of the Hon'ble Supreme Court in Rita Devi vs New India Assurance Co. Ltd., (2000) 5 SCC wherein while dealing with Section 167-A of the Motor Vehicles Act, 1988 The Court held as follows:-

9.A conjoint reading of the above two sub-sections of Section 163-A shows that a victim or his heirs are entitled to claim from the owner/insurance company a compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of

anyone. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words "death due to accident arising out of the use of motor vehicle".

18. There the deceased, a driver of the auto rickshaw was killed by the passenger who intended to steal the auto. The Court held that in the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing theft of the auto rickshaw. The Hon'ble Supreme Court held that the trial court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

19. I have considered the arguments advanced on behalf of the claimant and the insurance company. The Workmen's Compensation Act, 1923 has been amended by Workmen's Compensation (Amendment) Act, 2009. Several new amendments have been inserted and the Act itself has been renamed as Employee's Compensation Act, 1923 with effect from 22.12.2009. However, the present dispute will have to be examined as per the provisions as it stood prior to amendment. Section 3 of the Employee's Compensation Act, 1923 provides for employer's liability for compensation which reads as under:-

"3. Employer's liability for compensation.—(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:"

20. In *Jaya Biswal vs IFFCO Tokio General Insurance Co. Ltd.*, (2016) 11 SCC 201, the Hon'ble Supreme Court held that Employee's Compensation Act, 1923 is a welfare legislation

enacted to secure compensation to the poor workmen who suffer from injuries at their place of work. This becomes clear from a perusal of the preamble of the Act which reads as under:

a. "An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident."

This further becomes clear from a perusal of the Statement of Objects and Reasons, which reads as under:

b. "... The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.

c. An additional advantage of legislation of this type is that, by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects to such accidents as do occur. The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour. At the same time, a corresponding increase in the efficiency of the average workman may be expected."

21. The Hon'ble Court in the above noted case held that in order to succeed, a claimant has to prove:-

- (1) there was an accident,
- (2) the accident had a causal connection with the employment; and
- (3) the accident must have been suffered in the course of employment."

22.The Court relied on an earlier decision rendered in Regional Director ESI Corpn. And Another vs Francis De Costa and Another, (1996) 6 SCC 1. There the Court referred to the passage from Dover Navigation Co.Ltd. Vs Isabella Craig, 1940 AC 190: (1939) 4 All ER 558 (HL) which reads asunder:

"... Nothing could be simpler than the words "arising out of and in the course of the employment". It is clear that there are two conditions to be fulfilled. What arises "in the course" of the employment is to be distinguished from what arises "out of the employment". The former words relate to time conditioned by reference to the man's service, the latter to causality. Not every accident which occurs to a man during the time when he is on his employment, that is, directly or indirectly engaged on what he is employed to do, gives a claim to compensation unless it also arises out of the employment. Hence the section imports a distinction which it does not define. The language is simple and unqualified."

23.The argument that the claimant was negligent was therefore not entitled to any compensation because the claimant got injured as a result of his own negligence cannot be countenanced. Section 3 of the EC Act does not create any exception of the kind, which permits the employer to avoid his liability if there was negligence on the part of the workman. In fact, the Hon'ble Supreme Court in Jaya Biswal vs IFFCO Tokio General Insurance Co. Ltd., (2016) 11 SCC 201 observed that the reliance placed on the decisions rendered in the context of contributory negligence like the three-Judges Bench decision in National Insurance Co. Ltd. Vs Mastan and Another, (2006) 2 SCC 641 was wholly held to be misplaced as it was passed in relation to the Motor Vehicles Act, 1988, and was held to have no bearing on the facts of the case on hand.

24.The Court held that the EC Act does not envisage a situation where the compensation payable to an injured or deceased workman can be reduced on account of contributory negligence. It has been held by various High Courts that mere negligence does not disentitle a workman to compensation. Lord Atkin in Harris vs Associated Portland Cement Manufacturers Ltd., 1939 AC 71: (1938) 4 All ER 831 (HL) observed as under: (AC pp. 76-77).

"... Once you have found the work which he is seeking to do to be within his employment the question of negligence, great or small, is irrelevant and no amount of negligence in doing an employment job can change the workman's action into a non-employment job. ... In my opinion if a workman is doing an act which is within the scope of his employment in a way which is negligent in any degree and is injured by a risk incurred only by that way of doing it he is entitled to compensation."

25.The Court in *Jaya Biswal vs IFFCO Tokio General Insurance Co. Ltd.*, (2016) 11 SCC 201 referred to several High Courts' decisions. In *Janaki Ammal vs Divisional Engineer, Highways*, (1956) 2 LLJ 233 (Mad), this Court has taken a view which reads as under:-

"... '13. ... Men who are employed to work in factories and elsewhere are human beings, not machines. They are subject to human imperfections. No man can be expected to work without, ever allowing his attention to wander, without ever making a mistake, or slip, without at some period in his career being, momentarily careless. Imperfections of this and the like nature form the ordinary hazards of employment and bring a case of this kind within the meaning of the Act.' [Ed.: As observed in *Sk. Jafarji Hiptullah Bhoy Gin and Press Factory v. Sk. Ismail*, 1936 SCC OnLine MP 243, para 13 : AIR 1937 Nag 311 p. 313.] "

26.The Insurance Company has not seriously contested whether the claimant was the employee of the owner of the insured vehicle.

27.Therefore, the issue as to whether the accident occurred in the course of employment or not, stands answered in favour of the claimant.

28.Therefore, the only question to be answered is whether the amount compensation awarded based on Ex.P 11 is sustainable amount. As per the Ex.P 11 nature of injury as follows:-

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Sustained injuries of face and Lt. Mandible and Lt. Lower 4 teeth. Treated in GGH from 16/8/99 and 18/8/99.

29.The accident in question allegedly took place on 16.08.1999 in respect of which the claim petition was filed on 16.08.2001 and an order came to be passed on 04.11.2003. Therefore, while examining whether the compensation awarded to the claimant it has to be examined whether the aforesaid compensation award to the claimant falls within four corners of law in Section 4 of the Workmen's Compensation Act as it stood prior to 22.12.2009.

30.The compensation has been arrived by the Deputy Commissioner of Labour-I (Commissioner for Workmen's Compensation-I) in the following manner:-

1.Age	-	32	
2.Factor	-	203.85	
3.Monthly Income	-	Rs.1834/-	
4.Loss of earning capacity-		45%	
5.Compensation	-	65 x 203.85 x 1834 x 45	
		----	----
		100	100
		=	Rs.1,00,942/-.

31.The Compensation that has been awarded by the Deputy Commissioner of Labour-I (Commissioner for Workmen's Compensation-I) appears to be under Sub Clause 1 (C) Section 4 of the Workmen's Compensation Act, 1923. However, there is no discussion in the impugned order as to how the above determination was made.

32.Though, the above calculation for the compensation has been given in the impugned order, it is not clear under which

sub clause of Section 4 of the Workmen's Compensation Act, 1923, the above compensation has been arrived by the Deputy Commissioner of Labour-I (Commissioner for Workmen's Compensation-1) in the impugned order.

33. Section 4 of the Workmen's Compensation Act, 1923 as it stood then reads as under:-

Amount of compensation.- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--

(a) where death results from the injury an amount equal to fifty percent of the monthly wages of the deceased workman multiplied by the relevant factor;

or
an amount of eighty thousand rupees whichever is more;

(b) Where permanent total disablement results from the injury an amount equal to sixty percent monthly wages of the injured workman multiplied by the relevant factor;

or
an amount of ninety thousand rupees, whichever is more.

Explanation I- For the purposes of clause (a) and clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

Explanation II.-Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purpose of clause (a) and clause (b) shall be deemed to be four thousand rupees only;

(c) Where permanent partial disablement results from the injury

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as its proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) Permanently caused by the injury.

Explanation I.-- Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries;

Explanation II.-- In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) Where temporary disablement, whether total or partial, results from the injury

a half-monthly payment of the sum equivalent to twenty-five percent of monthly wages of the workman, to be paid in accordance with the

provisions of sub-section (2).

34.The above provision has categories for instances for determination of compensation. They are as follows:-

Section 4 (1)	Yardstick	Compensation
(a)	Injury resulting in death	an amount equal to fifty percent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of eighty thousand rupees whichever is more;
(b)	Injury resulting in permanent total disablement	An amount equal to sixty percent monthly wages of the injured workman multiplied by the relevant factor; or an amount of ninety thousand rupees, whichever is more.
(c)	Injury resulting permanent partial disablement	i. in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and ii.in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as its proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) Permanently caused by the injury.
(d)	Injury resulting in temporary disablement, whether total or partial	a half-monthly payment of the sum equivalent to twenty-five percent of monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

35.The claimant had claimed that he had been paid as income of Rs.100/- on daily wages while the owner of the vehicle claimed that he was only being paid of Rs.75/-. Since, no documents were produced, the Deputy Commissioner of Labour-I (Commissioner for Workmen's Compensation-I) has concluded applying Minimum Wages Act, 1948 applicable to the Auto Driver, monthly salary of the claimant would be a sum of Rs.1834/- per month.

36.The claimant has produced a photo copy of the Insurance Policy vide Ex.A2, as per which, any person including the insured is entitled to compensation provided that the person driving vehicle holds an effective and valid driving license to the category of vehicle insured hereunder, at the time of accident and was not disqualified from holding or obtaining such a licence.

37.Further, the disability certificate in Ex.A11 states that the claimant sustained injuries on his face. It has been concluded that the claimant has suffered by permanent disabilities of 45%.

38.During the cross examination of PW 2, the doctor concerned has confirmed that the claimant lost four of his teeth resulting 15% disability, 20% disabilities on account of loss of facial tissues and 10% disabilities on account of impaired speech. However, at the time of cross examination, the PW 2 has merely stated that due to loss the teeth, the ability of the claimant as driver is not lost. There is no clarity on the basis of determination of compensation. These aspects have to be re-examined.

39.Therefore, I am of the view that the case deserves to be remitted back to the Deputy Commissioner of Labour-I (Commissioner for Workmen's Compensation-1) or to such other authority designated under the amended Act to re-determine the compensation afresh.

40.The Deputy Commissioner of Labour-I (Commissioner for Workmen's Compensation-1) or to such other authority designated under the Act, shall pass a speaking order on the compensation after appropriately quoting the relevant provision of the Act as it stood prior to amendment.

41.In case, the claimant is entitled to compensation, interest shall also be awarded from the date of claim.

42.It is expected that the Deputy Commissioner of Labour-I (Commissioner for Workmen's Compensation-1) or to such other authority designated shall pass a speaking order within a period of 3 months from date of receipt of this order.

43.Accordingly, both the appeals stand partly allowed by way of remand for re-determination of the compensation and interest payable thereon. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner for Workmen's Compensation - I,
(Deputy Commissioner for Labour-I),
Chennai - 600 006.

2.The Section Officer,
V.R.Section, High Court, Madras.

+2cc to Mr.R.Sivakumar, Advocate sr.79592 & 79593

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