

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA. No.346 of 2017

Pushparaj

... Appellant/Petitioner

Vs.

1.M/s.Ashtalakshmi Gas Carriers,
No.3/143-A, Trichy Main Road,
Namakkal.

2.National Insurance Company Ltd.,
Divisional Office,
74-A, Namakkal Town,
Namakkal District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30(1) of Workmen's Compensation Act, 1923, against the order passed by the Deputy Commissioner of Labour for Workmen's Compensation Act, Salem, in W.C.No.239 of 2009 dated 10.02.2012.

For Appellant : Mr.M.Aniruthan

For Respondents: Mr.R.Sreevidhya [for R2]
R1 - Not ready in notice.

सत्यमेव जयते
J U D G M E N T

The claimant has preferred the above appeal against the award passed by the Commissioner of Workmen Compensation in W.C.No.239 of 2019 dated 10.02.2012.

2. According to the claimant he was working as a driver of a tanker lorry bearing registration No.TN-28-B-9167 under the 1st respondent. On 02.02.2009, when he drove the lorry towards Uppinankadi to Nelladi National Highway near Mangalor met with an accident, in which he suffered crush injury in his right leg. Pursuant to the same, his right leg was amputated above knee. Thereafter, he could not carry out any work and filed a claim

petition under the Workmen Compensation Act. Based on Ex.A.9- Disability certificate and Ex.A.8- X-Ray, the authority has fixed the loss of earning capacity at 80%. Aggrieved over the same, the appellant/claimant has preferred the appeal, on the ground that he is totally disabled to perform any work and therefore, the assessment of loss of earning capacity at 80% is erroneous and the authority ought to have fixed the same at 100%.

3. Admitted facts of the above case is that the appellant was an employee under the 1st respondent and that he drove the vehicle and met with an accident. The accident had happened during the course of employment and the injury sustained by the claimant out of this accident are not disputed. It is also not in dispute that amputation of leg above knee disabling him from continuing his avocation as driver. Apart from that, there are other injuries also. Ex.A.9 fixes the physical disability at 82%, but the authority has taken the disability equivalent to loss of earning capacity and fixed the same at 80%. It is pertinent to note that Ex.A.7 is the proof of cancellation of the driving license given to the claimant. In that event, it is clear that the claimant cannot drive any vehicle in future. The amputation of right leg above knee, in the cases of driver, clearly shows that he cannot drive the vehicle in future leaving his loss of earning capacity absolutely Nil. The Hon'ble Supreme Court in very many cases has held that loss of leg will completely deprive a person to carry on his avocation as driver and hence the loss of earning should be fixed at 100%. In the present case, the loss of earning capacity has been fixed at 80%. The Course adopted by the authority in supplementing the physical disability as that of loss of earning capacity is apparently erroneous. Therefore, this Court is inclined to set aside the order fixing loss of earning capacity at 80% and modify the same as 100%. Accordingly, the compensation is re-worked as under:-

Original compensation awarded:-

$\text{Rs.}4000 \times 60/100 \times 205.95 \times 80/100 = \text{Rs.}3,95,424/-$

Modified compensation:-

$\text{Rs.}4000 \times 60/100 \times 205.95 \times 100/100 = \text{Rs.}4,94,280/-$

Thus, the quantum of compensation is enhanced from Rs.3,95,424/- to Rs.4,94,280/-.

4. The 2nd respondent/Insurance Company is liable to pay the enhanced compensation amount with interest at the rate of 12% per annum from the lapse of expiry of 30 days from the date of accident till the date of deposit. Hence, this Court, directs the 2nd respondent/Insurance Company to deposit the award amount

along with interest @ 12% p.a., less the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same on production of appropriate proof of identification.

5. Accordingly, the Civil miscellaneous appeal is allowed.
No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To:

1.The Deputy Commissioner of Labour,
Salem.

2. The Section Officer,
V.R Section,
High Court, Madras(2 copies)

+1cc to Mrs.R.Sreevidhya, Advocate sr.no.29974
+1cc to Mr.M.Aniruthan, Advocate sr.28309

CMA. No.346 of 2017

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nr 02/07/2019

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