



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A(MD)No.292 of 2006

and

C.M.P(MD)No.1629 of 2006

The Manager,
National Insurance Company Limited,
74A, Paramthi Road,
Namakkal.

... Appellant/2nd Respondent

Vs.

1.P.Murugesan

... 1st Respondent/Petitioner

2.M.Lakshmi

... 2nd respondent / 1st respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of Workmens's Compensation Act, 1923, against the judgment and decree made in W.C.No.13 of 2004, dated 28.02.2005 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Dindigul.

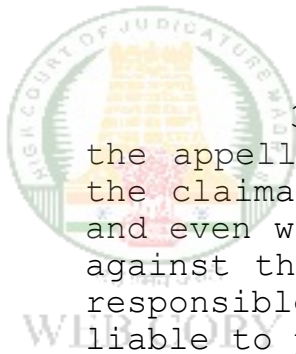
For Petitioner : Mr.N.Murugesan

For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 28.02.2005 made in W.C.No.13 of 2004 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Dindigul.

2. It is a case of injury caused due to the accident that took place on 20.05.2003 and that when the claimant driving his lorry bearing registration No.TN 07 B 6981, at Karur-Dharapuram main road, a lorry bearing registration No.TN 39 H 5059 was also going on the very same road in front of the claimant's lorry and when the driver of the lorry bearing registration No.TN 39 H 5059 applied sudden break without giving any signal, the accident took place and due to the accident, the claimant sustained grievous injuries all over the body. Hence, the claimant filed an application in W.C.No.13 of 2004 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Dindigul, seeking compensation for a sum of Rs.3,00,000/-.



3.In the counter affidavit filed before the Court below, the appellant denied the manner of the accident. It is stated that the claimant alone drove the vehicle in a rash and negligent manner and even without observing the traffic rules and regulations, dashed against the vehicle from behind. Therefore, the claimant is solely responsible for the accident. Hence, the Insurance company is not liable to pay compensation to the claimant. There is no merit in the petition and the same deserves to be dismissed.

4.On the basis of the available evidence on record, the Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Dindigul, has awarded a sum of Rs.98,735/- along with interest @ 12%. Against the award passed by the Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Dindigul, the present Civil Miscellaneous Appeal has been preferred at the instance of the appellant/Insurance Company on the ground that the Tribunal has erred in finding that the claimant sustained grievous injuries and as per Ex.P-6-Wound certificate, the injury sustained by the claimant is a simple injury and he did not sustain any bone injury. P.W.2-Orthopedist had assessed the disability as 25% without any basis.

5.Per contra, the learned counsel for the first respondent/claimant contented that the learned Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Dindigul, awarded a just and reasonable compensation and the same does not require any interference and hence, this appeal is to be dismissed.

6.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. It is seen from the award that the Court below has discussed in detail about the manner of the accident and found that the driver of the lorry bearing registration No.TN 07 B 6981, which was insured with the appellant, was the cause for the accident and the policy also covers the risk of Driver of the said lorry and therefore, there is no infirmity in fixing the liability on the part of the driver of the said lorry and the same does not require interference at the hands of this Court.

8.Considering the submissions made by the learned counsel appearing for the appellant and on the perusal of the disability certificate issued by the Doctor, which is marked as Ex.P.7 and Wound Certificate-Ex.P.6, this Court is of the view that the disability is a temporary disability and there is no bone fracture as per the wound certificate. Under these circumstances, the Authority below has taken the functional disability as 25%, which is not correct and it is inappropriate to consider the 25% temporary disability as a functional disability for the purpose of determining the compensation. Therefore, this Court is inclined to net fix the disability as 20% instead of 25%.



9.The learned counsel for the appellant has also fairly agreed for fixing the functional disability as 20% for the purpose of determining the compensation.

10.Accordingly, this Court is inclined to modify the functional disability as 20% instead of 25%. In other aspects, the award of the Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Dindigul, is confirmed and hence, the compensation under the head of loss of income would come to $(60/100 \times 3229 \times 203.85 \times 20/100) = \text{Rs.}78,988/-$ rounded off to Rs.79,000/-.

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the award dated 28.02.2005 passed in W.C.No.13 of 2004, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Dindigul, is modified. Total compensation is reduced to Rs.79,000/- from the amount of Rs.98,735/-. The appellant / Insurance Company is directed to deposit the entire award amount to the credit of W.C.No.13 of 2004, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Dindigul, less the amount already deposited, if any, along with interest at the rate of 12% per annum from the date of petition till date of realisation and proportionate costs, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Commissioner for Workmen's Compensation (Deputy Commissioner for Labour), Dindigul, is directed to transfer the award amount to the Personal Savings Bank Account Number of the claimant, after getting his Account Details, within a period of two weeks thereafter. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To,
1.The Commissioner for Workmen's Compensation
(Deputy Commissioner for Labour), Dindigul.
2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.N.MURUGESAN, Advocate (SR-85756[F] dated 06/09/2019)

C.M.A(MD)No.292 of 2006

04.09.2019

rij2

JM/01.10.2019/3P/5C

<https://hcservices.ecourts.gov.in/hcservices/>