

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1651 of 2015

A.Kamal Basha

..Appellant/Applicant

Versus

1. Thiru.P.Chandrasekaran

2. United India Insurance Company Limited,
Divisional Office, No.2,
Dr.Sankaran Road,
Namakkal District.

..Respondents/Opposite Parties

Prayer: Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen's Compensation Act praying to set aside the award dated 18.12.2013 made in W.C.No.101 of 2013 on the file of Deputy Commissioner of Labour, Salem.

For Petitioner : Mr.M.Lokesh

for Mr.Ma.P.Thangavel

For R1 : No Appearance

For R2 : Mrs.I.Malar

सत्यमेव जयते
O R D E R

Heard the parties through Video Conferencing due to COVID-19 pandemic.

2. The claimant/appellant herein has filed this appeal seeking for enhancement of compensation.

3. Mr.M.Lokesh, learned counsel for the claimant/appellant herein submitted that on 31.03.2012 at about 2 a.m., while the claimant was driving Tanker Lorry bearing Registration No.TN-27-V-2633 belonging to the first respondent and insured with the second respondent, near Uppidamangalam Pirivu Salai on the Karur-Trichy NH main road, another lorry coming from the

opposite direction, driven in a rash and negligent manner, dashed against the claimant's lorry, as a result, he had sustained major injuries, namely, (i) Fracture shaft of femur left (ii) Fracture of Tibia right (iii) Contusion of chest wall (iv) Contusion of back. Immediately after the accident, he was taken to Dr.G.C.Hospital, Karur, where surgery was done and interlocking nail, plate and screws were inserted and thereafter, he was shifted to M.M.Hospital, Namakkal, where surgery was done for fracture of tibia right and he was admitted as inpatient for about 40 days and spent nearly Rs.3,00,000/- towards medical expenses. In spite of spending huge amount, still the claimant is not able to recover fully and as a result, he is not only able to perform as a driver but also lost his livelihood. At the time of accident, his monthly salary was Rs.10,000/- including batta and other perks.

4. It is further submitted by the learned counsel for the claimant that the first respondent/employer also in their counter affidavit admitted that the claimant was earning Rs.10,000/- per month, however, after the accident, he stopped coming to the office of the first respondent. Such stand of the employer shows that the claimant has suffered 100% permanent disability, due to which, he is unable to perform as a driver. However, learned Deputy Commissioner of Labour, Salem, while allowing the claim petition, has committed several errors in arriving just and fair compensation.

5. With regard to fixation of percentage of disability, learned counsel argued, Doctor-PW2, who treated him, came to the witness box and deposed before the learned Deputy Commissioner of Labour that the claimant had suffered fracture on the left leg thigh bone, fracture of tibia on his right leg, for which, surgery and bone grafting was done and therefore, his right leg was shortened about 2.50 CM. Besides, screws and plate were inserted and it is still not yet removed and malunited. PW2-Doctor assessed the disability @ 70% as per the Disability Certificate/Ex.P15. However, learned Deputy Commissioner of Labour, without considering the evidence of Doctor and Disability Certificate, has wrongly fixed 62% as disability, instead of 70%.

6. With regard to fixation of monthly wages, learned counsel argued that when first respondent/employer himself has filed a counter affidavit admitting that the claimant was earning a sum of Rs.10,000/- per month, overlooking the said version, learned Deputy Commissioner of Labour, without any justification, has wrongly fixed a meagre sum of Rs.6,401/- towards his monthly wages. Fixing of such a meagre sum by the learned Deputy Commissioner of Labour is unfair and unjustified in view of amendment made to Employees' Compensation Act, 1923, with effect

from 18.01.2010, enhancing minimum monthly wages from Rs.4,000/- to Rs.8,000/-, and to that effect, Section 4(1-B) of the Act was inserted. This was also subsequently notified in Gazette on 31.05.2010. Therefore, learned Deputy Commissioner of Labour was not right in fixing Rs.6,401/- as monthly income and it ought to have fixed at least Rs.8,000/- towards monthly salary. In this case, it is admitted by the employer that the injured driver was paid Rs.10,000/- as monthly wages, therefore, learned Deputy Commissioner of Labour ought not to have reduced the monthly wages to Rs.6,401/- and it should be Rs.10,000/-, he pleaded.

7. Opposing the above submissions, Mrs.I.Malar, learned counsel appearing for the second respondent/Insurance Company submitted that merely on the affidavit filed by the employer indicating that the claimant was receiving Rs.10,000/- per month without the support of salary slip/salary voucher, the claimant cannot come to the Court and demand fixation of Rs.10,000/- towards his monthly wages. When Section 4(1B) of the Employees Compensation Act came into effect from 18.01.2010 and thereby Notification issued by the Central Government on 31.05.2010 says fixation of monthly wages at Rs.8,000/-, it cannot be fixed Rs.10,000/- towards monthly wages.

8. But, this Court is unable to find any merit on the above said submission. As per Ex.P5, he is possessing Heavy Transport Vehicle (HTV) License with Badge endorsement. While he was working as Tanker Lorry Driver under the first respondent, he met with an accident on 31.03.2012 and the first respondent/employer had also filed a counter affidavit before the learned Deputy Commissioner of Labour and admitted that claimant was paid Rs.10,000/- towards monthly wages, however, after the said accident, he did not come back to continue his job. That shows that the first respondent was paying Rs.10,000/- towards monthly wages, but, in view of permanent disability, he is unable to continue his job, therefore, he has lost his earning capacity permanently. Thus, learned Deputy Commissioner of Labour ought to have accepted the stand taken by the employer that the claimant was receiving Rs.10,000/- as monthly wages.

9. Secondly, Employees' Compensation Act, 1923, was amended inserting Section 4(1-B) with effect from 18.01.2010 enhancing monthly wages from Rs.4,000/- to Rs.8,000/-. This was also notified by the Central Government in Gazette on 31.05.2010. In the present case, accident had occurred on 31.03.2012, however, learned Deputy Commissioner of Labour, without taking note of the said amendment enhancing monthly wages to Rs.8,000/-, has wrongly fixed Rs.6,401/- as his monthly wages. Thus, this Court is inclined to fix monthly wages at Rs.10,000/-, instead of Rs.6,401/-, as he was earning Rs.10,000/- per month as admitted

by the employer in their counter affidavit.

10. Coming to the percentage of disability, as could be seen from the Disability Certificate-Ex.P15 issued by the Doctor-PW-2, the claimant had sustained injuries, namely, Fracture on his left leg thigh bone and fracture of tibia on his right leg; for which, interlocking nail, plate and screws were fixed and due to which, his right leg was shortened by 2.50 CM and he was also taking treatment for more than 40 days as inpatient. Therefore, in view of such hurdles faced by the claimant, I am of the view that he cannot be able to continue his avocation as done earlier and therefore, this would result in loss of earning capacity of 100%, hence, fixing of permanent disability at 62% by the learned Deputy Commissioner of Labour is without any justification and therefore, the same is modified and it is fixed at 70% disability as assessed by the Doctor-PW2.

11. Learned counsel for the Insurance Company, relying on the decision of the Hon'ble Division Bench of this Court in Singadurai Vs. S.Chandrasekaran and M/s.United India Insurance Co. Ltd., reported in 2004 2 TNMAC 210 (DB), sought to argue that although Doctor-PW2 deposed before the learned Commissioner that the appellant sustained 70% disability, learned Commissioner has rightly fixed 62% disability, therefore, fixation of 62% disability cannot be altered. In the above cited Singadurai's case, claimant was a driver and his right hand got amputated and the doctor assessed the disability at 80% and therefore, based on the disability certificate, the Commissioner therein fixed loss of earning capacity as 80% and in the above said decision, rejecting the plea to reduce the percentage of disability, learned Division Bench confirmed the percentage of disability as assessed by the Doctor therein.

12. In the case on hand, as highlighted above, interlocking nail, plate and screws were fixed and surgery and bone grafting was also done on his right leg, due to which, his right leg was shortened by 2.50 CM. It is also to be noted that after sustaining grievous injuries, the claimant was running from one hospital to another hospital for better treatment and still he is not able to find a job, therefore, fixation of 70% or 62% of disability does not matter, as he has lost his job and in future also, he cannot continue his avocation. Therefore, fixation of 70% disability as fixed by the Doctor-PW2 is just and proper and accordingly, 70% of disability is fixed for computation compensation towards loss of earning capacity. Hence, the decision in Singadurai (cited supra) relied on by the learned counsel for the Insurance Company is in fact support the case of the claimant.

13. Mrs.I.Malar, learned counsel for the Insurance Company,

has also argued that the claimant has not adduced any evidence to show that he was undertaking treatment as inpatient for 40 days and therefore, learned Deputy Commissioner of Labour has rightly fixed Rs.86,005/- towards medical expenses. But, the said submission is not legally sustainable, for the reason that the claimant has adduced sufficient series of medical bills/Ex.P9 showing that he has spent a sum of Rs.2,28,369/-, however, without any discussion, learned Deputy Commissioner of Labour has fixed only Rs.86,005/- and therefore, based on Ex.P9-Medical Bills, Rs.2,28,369/- is hereby awarded towards medical expenses.

14. Regarding interest, learned Deputy Commissioner of Labour has directed to pay interest at 12% per annum only if the Insurance Company fails to pay the interest within 4 weeks from the date of receipt of the order. Such an approach is also not legally tenable in view of the ratio laid down by the Hon'ble Apex Court in the case North East Karnataka Road Transport Corporation Vs. Sujatha reported in CDJ 2018 SC 1121. For better appreciation, paragraph Nos.19 to 30 thereof are extracted below:-

"19. The question relates to grant of interest on the awarded amount and further, from which date, it is to be awarded to the claimant (respondent).

20. The grant of interest on the awarded sum is governed by Section 47A of the Act. The question as to when does the payment of compensation under the Act becomes due and consequently what is the point of time from which interest on such amount is payable as provided under Section 47A (3) of the Act remains no more *res integra* and is settled by the two decisions of this Court.

21. As early as in 1975, a four Judge Bench of this Court in *Pratap Narain Singh Deo Vs. Srinivas Sabata & Anr.* (1976) 1 SCC 289: AIR 1976SC 222 speaking through Singhal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workman in the accident which arose out of and in the course of employment. It was accordingly held that it is the date of the accident and not the date of adjudication of the claim, which is material.

22. Another question analogous to the main question arose before the Three Judge Bench of this Court in the case of *Kerala State Electricity Board & Anr. Vs. Valsala K. & Anr.*

(1999) 8SCC 254: AIR 1999SC 3502 as to whether increased amount of compensation and enhanced rate of interest brought on statute by amending Act 30/1995 with effect from 15.09.1995 would also apply to cases in which the accident took place before 15.09.1995. Their lordships, placing reliance on the law laid down in Pratap Narains case (supra) held that since the relevant date for determination of the rate of compensation is the date of accident and not the date of adjudication of the claim by the Commissioner and hence if the accident has taken place prior to 15.09.1995, the rate applicable on the date of accident would govern the subject.

23. After these two decisions, this Court in two cases (both by the Two Judge Bench) viz. National Insurance Company Ltd vs. Mubasir Ahmed & Anr. (2007) 2 SCC 349 and Oriental Insurance Company Ltd. vs. Mohmad Nasir & Anr. (2009) 6 SCC 280 without noticing the law laid down in Pratap Narain and Valsala cases (supra) took a contrary view and held that payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made.

24. This conflict of view in the decisions on the question was noticed by this Court (Two Judge Bench) in Oriental Insurance Company Ltd vs. Siby George and others (2012) 12 SCC 540. Justice Aftab Alam speaking for the Bench referred to afore-mentioned decisions and explaining the ratio of each decision held that since the two later decisions rendered in the cases of Mubasir and Mohmad Nasir (supra) which took contrary view without noticing the earlier two decisions of this Court rendered in Pratap Narain and Valsala cases (supra) by the larger Benches (combination of four and three Judges respectively) and hence later decisions rendered in Mubasir and Mohmad Nasir cases (supra) cannot be held to have laid down the correct principles of law on the question and nor can, therefore, be treated as binding precedent on the question.

25. In other words, the law laid down in Pratap Narain and Valsala cases (supra) was held to hold the field through out as laying down the correct principle of law on the subject. The Two Judge Bench in Oriental

Insurance Company Ltd vs. Siby George and others (supra) accordingly followed the principle of law laid down in Pratap Narain and Valsala cases (supra) and decided the case instead of following the law laid down in Mubasir and Mohmad Nasir cases (supra) which was held per incuriam.

26. Now coming to the facts of this case, we find that the Commissioner awarded the interest to the respondents at the rate of 12% per annum on the awarded sum but it was awarded from the expiry of 45 days from the date of order and that too, if the appellant failed to deposit the awarded sum within 45 days.

27. In other words, if the appellant had deposited the awarded sum within 45 days from the date of the order then the respondent was not entitled to claim any interest on the awarded sum, but if the appellant had failed to deposit the awarded amount within 45 days, then the respondent was entitled to claim interest at the rate of 12% per annum from the date of the order.

28. In our opinion, the afore-mentioned direction of the Commissioner in awarding the interest on the awarded sum is contrary to law laid down by this Court in Pratap Narains case (supra) and hence not legally sustainable.

29. In the light of the foregoing discussion, even though the respondent did not challenge this direction by filing any appeal in the High Court nor challenged it by filing any appeal in this Court too, yet the question being a pure question of law, this Court with a view to do substantial justice to the respondent consider it just and proper to modify the order of the Commissioner in respondent's favour so as to make the same in conformity with the law laid down by this Court in the above referred two decisions (supra).

30. Accordingly and in view of the foregoing discussion, the order of the Commissioner dated 23.04.2002 is modified in favour of the respondent to the extent that the awarded sum of Rs. 3,79,120/- shall carry interest at the rate of 12% per annum from the date of accident i.e. 06.04.1999."

A careful reading of the above clearly shows that grant of interest on the awarded amount remains no more res-integra as

has been settled by the two decisions of the Hon'ble Apex Court that employer becomes liable to pay compensation as soon as the personal injury is caused to the workman in the accident which arose out of and in the course of employment and therefore, it is the law of the land that it is the date of the accident, not the date of adjudication of the claim for calculation of interest on the awarded sum. In the present case, accident had occurred on 31.03.2012 and therefore, interest at the rate of 12% per annum is to be granted from the date of accident i.e. 31.03.2012, not from the date of award passed by the learned Deputy Commissioner of Labour i.e. 18.12.2013. Accordingly, interest stands modified.

15. Schedule-IV of the Employees' Compensation Act, 1923, states that only completed years of age on the last birthday of the workman should be taken on record for computing compensation. In this case, date of birth of the claimant is 15.06.1951 and the date of accident is 31.03.2012 and therefore, on the said date of accident, his age was 60 years 9 months 16 days and hence, the relevant factor for those who completed 60 years of age is 117.41, however, without calculating his age properly, learned Deputy Commissioner of Labour has wrongly fixed the relevant factor as 113.77 and therefore, relevant factor stands modified as 117.41.

16. In view of the foregoing discussions/observations, the claimant is entitled to the modified quantum of compensation as stated below:-

Sl.No	Head	Compensation
1.	Income	Rs.10,000/-
2.	Age/Factor	60-years / 117.41
	Rs.10000x60/100x117.41x70% (towards loss of earning capacity)	Rs.4,93,122/-
3.	Medical Bills as per Ex.P9 series	Rs.2,28,369/-
Total Compensation		Rs.7,21,491/-

The claimant/appellant herein is permitted to withdraw the enhanced compensation of Rs.7,21,491/- with interest @ 12% per annum from the date of accident i.e. 31.03.2012 forthwith.

17. In fine, the impugned award passed by the learned Deputy Commissioner of Labour, Salem, stands modified to the extent

mentioned above. Consequently, with the above modified compensation, the Civil Miscellaneous Appeal is allowed. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
The Deputy Commissioner of Labour, Salem.

Copy to the Section Officer,
VR Section, High Court, Madras.

C.M.A.No.1651 of 2015

vsn ii (co)
rr ii (27/11/2020)



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