

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.1736 of 2015

R.Kumar

... Appellant/Petitioner

-vs-

1. V.Santhosh

2.National Insurance Company Limited,
Branch Office No.1,
Thantalperiyar Complex,
Near Old Bus Stand,
Salem-636 001.

... Respondents/Respondents

PRAYER: Appeal is filed under Section 30 of the Workmen Compensation Act, 1923 to set aside the judgment and decree dated 21.03.2014 passed in W.C.No.254 of 2012 on the file of the Commissioner for Workmen's Compensation / Deputy Commissioner of Labour, Salem insofar as awarding interest from the date of judgment and decree without considering the loss of earning capacity of the Appellant.

For Appellant : M/s.T.Dharani

For R2 : Mr.Michael Viswasam

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J U D G M E N T

This Appeal has been filed to set aside the Order passed in W.C.No.254 of 2012 dated 21.03.2014 by the Commissioner for Workmen's Compensation / Deputy Commissioner of Labour, Salem, by which the Insurance Company / 2nd Respondent herein was

directed to pay Rs.4,52,877/- with 12% interest to the Appellant herein by taking into account the loss of earning capacity at 65%.

2. The core point involved in this matter is as to whether the interest from the date of accident can be foisted on the insurance company or on the employer, in respect of the injury suffered by the Appellant in an accident occurred out of and in the course of employment.

3. It is stated that there are two types of policies, namely, one is pertaining to Workmen's Compensation and the other one is Motor Insurance Policy. If the employer has taken the Motor Insurance Policy, the interest will have to be paid by the Insurance Company and not by the employer. If the policy is taken under the Workman Compensation, depending upon the conditions mentioned in the policy, the interest may or may not be foisted on the Insurance Company.

4. In the present case on hand, since it is a Motor Insurance Policy, it is the duty cast upon the Insurance Company to pay the interest. The question raised in this case is whether the Insurance Company will have to pay the interest on the compensation arrived at by the Authority from the date of accident or within 30 days from the date stipulated in the order or from the date of knowledge. It is no doubt true that the Insurance Company will have to pay the interest from the date of knowledge, provided the employer had intimated the Insurance Company. Even though the interest is liable to be paid from the date of accident as per the provisions of the Act, 1923, it is the duty cast upon the employer to deposit the admitted amount and contest the matter. It is also mandatory on the part of the employer to inform the insurance company, so that the insurance company will verify and pay the admitted liability. If there is any dispute with regard to the liability or differences in liability, the issue may be taken before the authority for adjudication whether the amount is payable by the insurance or the employer together with interest payable by anyone of the parties in terms of the policy taken.

5. In the present case on hand, the employer has not remitted the amount and has taken up the matter before the Authority, who has determined the amount, payable by the insurance company for the injury suffered out of and in the course of employment. The insurance company has deposited the amount within 30 days as per the order impugned in this CMA. Had the insurance company not deposited the amount within 30 days, certainly, this Court would have said that it is the duty cast upon the insurance company to pay the interest from the date of accident, even though they had knowledge on the date of receipt

of notice from the authority under W.C.Act.

6. It is the grievance of the appellant that the order of the authority in not granting interest from the date of accident is erroneous, as the payment of compensation under the W.C.Act should be paid from the date of accident and not from the date of adjudication of the claim as adumbrated under Section 4A(3) (a) of the Act, which contemplates the effect of payment on completion of one month from the date of accident and not from the date of adjudication. Hence, the Authority, without application of mind, has arbitrarily granted compensation from the date of claim.

7. It is seen that there was a dispute, which has been contested and the insurance company has deposited the amount within 30 days as per the order foisting liability on the insurance company and the order of the authority has been complied with in toto, which has been questioned in this appeal insofar as the award of interest period is concerned.

8. In this case, the employer had neither informed the insurance company as required under Section 10B of the W.C.Act, 1923 nor remitted the admitted amount. Moreover, there was a dispute with regard to the manner in which the accident had occurred. Therefore, in the considered opinion of this Court, the insurance company has no liability whatsoever to pay interest from the date of accident and the liability to pay interest falls purely on the employer.

9. Accordingly, the Civil Miscellaneous Appeal is allowed and the Order passed in W.C.No.254 of 2012 dated 21.03.2014 by the Commissioner for Workmen's Compensation / Deputy Commissioner of Labour, Salem is modified to the extent that the appellant is entitled to interest @ 12% from the date of accident, which, namely, between the period falling from the date of accident and the date of deposit by the insurance company, is payable by the owner of the vehicle / 1st Respondent herein within a period of 30 days from the date of receipt of a copy of this order.

10. Before parting with this judgment, this Court wants to emphasize that in case the parties fail to appear in the proceedings before the Authority and represent the matter either in person or through counsel, the Authority may proceed and decide the matter on merits, as if the parties had duly attended or had been represented by taking into account the available documents produced before him and the matter need not be recalled and it cannot be treated as an exparte order, even if the parties are absent. The purpose of legislation, which is in existence for about 97 years, is to ensure speedy remedy and

compensation payable to the injured or the dependent of the deceased and it is to be noted that even in case of fictitious claim or on the case having no merits, the employer or the insurance company is dragged into the proceedings unnecessarily, which defeats the very object of legislation. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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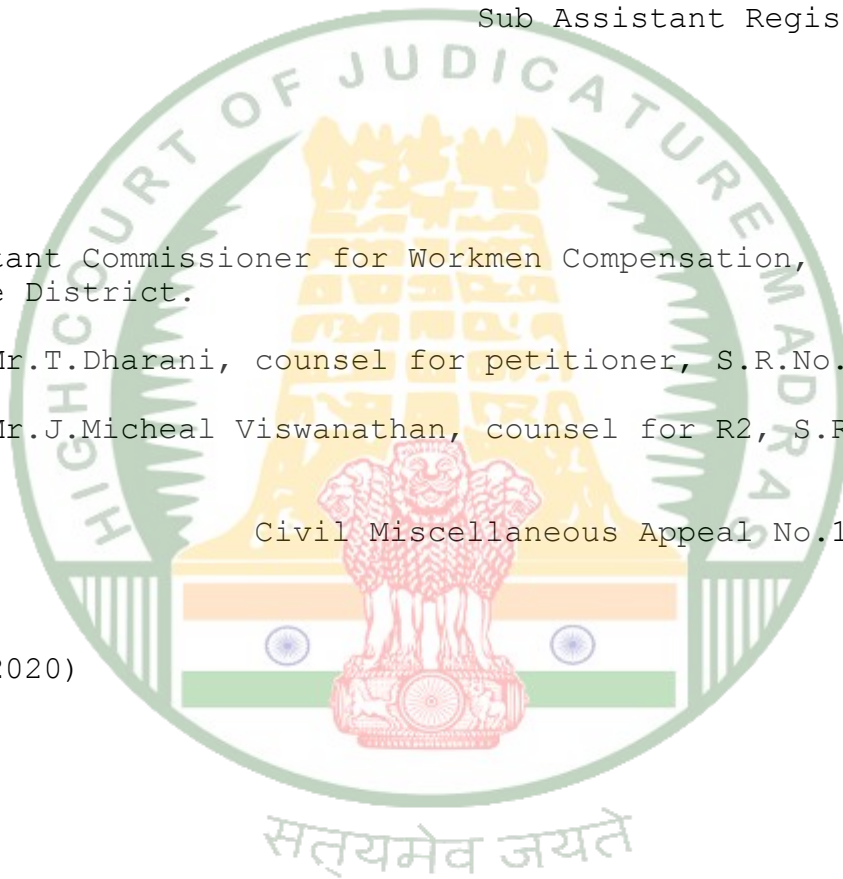
The Assistant Commissioner for Workmen Compensation,
Coimabtoire District.

+1 cc to Mr.T.Dharani, counsel for petitioner, S.R.No.6785/20

+1 cc to Mr.J.Micheal Viswanathan, counsel for R2, S.R.No.6307/20

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NR(CO)
RN(22/05/2020)



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