

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

C.M.A.No.1931 of 2013

Sakthivel

...Appellant/Applicant/Petitioner

Vs.

1.T.Palanisamy

2.The New India Assurance Co., Ltd.,

D.O.-5-Roads, Premier Complex,

Salem - 4.

... Respondents/Opposite parties

Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order of the Commissioner for Workmen's Compensation, Salem dated 12.06.2012 made in W.C.No.53 of 2002.

For Appellant : Mr.Tranqubar Dorai Vasu

For 1st Respondent : Not ready

For 2nd Respondent : Mrs.R.Sreevidhya

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the award passed in W.C.No.53 of 2002 on the file of the Workmen's Compensation Commissioner/Deputy Commissioner of Labour, Salem, by order dated 12.06.2012.

2.The very short facts which are necessary to be noticed for disposal of this Appeal are as follows:

(i) That the appellant herein was working as a Lorry Cleaner under the 1st respondent. The vehicle was insured to the 2nd respondent/New India Assurance Company Limited.

(ii) While so, on 27.05.2001 due to the accident taken place, the right leg of the appellant got crushed under the wheels of the lorry, which was mistakenly moved by the driver, with the result the claimant had to lose the right leg as his right leg was fully amputated.

(iii) In order to get compensation for the said accident, the appellant invoking the provisions of the Workmen's Compensation Act filed W.C.No.53 of 2002 on the file of the

aforesaid Workmen's Compensation Commissioner, where, after hearing both sides, the Workmen Compensation Commissioner, by the impugned order, passed an award taking into account the loss of earning capacity to the extent of 80% and calculated the compensation to the extent of Rs.2,83,091/- and accordingly awarded.

3.In this context, since it is the cause of the appellant that, such an amputation of one leg would result in loss of earning capacity to the extent of 100%. Therefore, the learned Workmen Compensation Commissioner ought to have taken 100% loss of earning capacity and accordingly, it ought to have been awarded. Since the Workmen Compensation Commissioner taken into account only 80%, aggrieved over the same, the claimant has filed the present appeal.

4.I have heard Mr.Tranquebar Dorai Vasu, learned counsel for the appellant, who would submit that, the fact remains that, the appellant has lost the entire right leg above the knee, amputation was taken place, with the result, as a Cleaner, the appellant/claimant is not in a position to involve in any work and thereby he has been placed at 100% disability by way of losing earning capacity and therefore, in such kind of cases, the compensation should have been awarded by taking into account the loss of earning capacity as 100%.

5.In support of his contention, the learned counsel has relied upon a decision of the Hon'ble Apex Court reported in 2012 (1) TN MAC 144 (SC) in the matter of Mohan Soni Vs. Ram Avtar Tomar & others.

6.I have heard the learned counsel for the 2nd respondent/ Insurance Company, who would submit that, no doubt due to the accident, the appellant/claimant lost right leg pursuant to the amputation and taking into account such kind of amputation of right leg, the Workmen Compensation Commissioner has rightly held that he has lost the earning capacity to the extent of 80% which is the maximum and accordingly, the compensation was calculated and directed to be paid to the extent of Rs.2,83,009/- beyond that there is no scope for taking his loss of earning capacity to 100%, as claimed by the claimant and therefore, the said award, which is impugned herein, passed by the Workmen Compensation Commissioner does not warrant any interference from this Court in this appeal.

7.I have considered the said submissions made by both the learned counsel for the parties and perused the materials placed before this Court.

8. Insofar as the facts mentioned above, there is no quarrel absolutely between the parties as the accident took place during the course and out of the employment of the claimant/appellant and with the result, he lost the right leg by way of amputation and thereby he lost the earning capacity to the maximum extent, but the only quarrel between the parties is that, whether the loss of earning capacity as has been quantified or accepted by the Workmen Compensation Commissioner is only to the extent of 80% or beyond that.

9. In this context, the learned counsel appearing for the appellant submits that, no doubt such kind of amputation of a leg may not be 100% loss of earning in respect of other clerical job where a person who lost one leg can sit and do some clerical work as it depends upon the nature of work being undertaken by the injured. However, in a case of this nature, where the appellant/ claimant admittedly had been the Cleaner of a lorry and without two legs, he cannot be put in or pressed into employment. Therefore, because of this loss of one leg, he has completely lost the entire earning capacity, therefore, it should be construed only as '100%'.

10. In order to emphasise the said proposition, the learned counsel for the appellant relied upon the aforesaid judgment in Mohan Soni case (cited supra), where the Hon'ble Apex Court has dealt with the similar case where the claimant was a Cart Puller, who lost one leg and because of his loss of one leg, the Accident Claims Tribunal though quantified the disability at 50%, that was not accepted by the Apex Court. The relevant portion of the discussion and conclusion arrived at by the Hon'ble Apex Court reads thus:

"8. The question of loss of earning capacity resulting from amputation of one of the legs in the case of a tanker driver was considered by this Court in K. Janardhan v. United India Insurance Company Limited and another, (2008) 8 SCC 518. In that case, a tanker driver suffered serious injuries in a motor accident and as a result, his right leg was amputated upto the knee joint. He made a claim under the Workmen's Compensation Act, 1923. The Commissioner for Workmen's Compensation held that disability suffered by him as a result of the loss of the leg was 100% and awarded compensation to him on that basis. In appeal, the High Court, like in the present case, referred to the Schedule to the Workmen's Compensation Act, 1923 and held that the loss of a leg on amputation amounted to reduction in the earning capacity by 60% and, accordingly, reduced the compensation awarded to the tanker driver. This Court set aside the High Court judgment and held that the tanker driver had suffered

100% disability and incapacity in earning his keep as a tanker driver as his right leg was amputated from the knee and, accordingly, restored the order passed by the Commissioner of Workmen's Compensation. In K. Janardhan this Court also referred to and relied upon an earlier decision of the Court in Pratap Narain Singh Deo v. Srinivas Sabata (1976) 1 SCC 289, in which a carpenter who suffered an amputation of his left arm from the elbow was held to have suffered complete loss of his earning capacity.

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10. In light of the aforesaid decisions, we find it extremely difficult to uphold the decision of the High Court and the Tribunal based on the finding that the loss of the appellant's earning capacity as a result of the amputation of his left leg was only 50%. It is noted above that the appellant used to earn his livelihood as a cart puller. The Tribunal has found that at the time of the accident his age was 55 years. At that age it would be impossible for the appellant to find any job. From the trend of cross-examination it appears that an attempt was made to suggest that notwithstanding the loss of one leg the appellant could still do some work sitting down such as selling vegetables. It is all very well to theoretically talk about a cart puller changing his work and becoming a vegetable vendor. But the computation of compensation payable to a victim of motor accident who suffered some serious permanent disability resulting from the loss of a limb etc. should not take into account such indeterminate factors. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income. The loss of earning capacity of the appellant, according to us, may be as high as 100% but in no case it would be less than 90%.

We, accordingly, find and hold that the compensation for the loss of appellant's future earnings must be computed on that basis. On calculation on that basis, the amount of compensation would come to Rs.3,56,400/- and after addition of a sum of Rs.30,000/- and Rs.15,000/- the total amount would be Rs.4,01,400/-. The additional compensation amount would carry interest at the rate of 9% per annum from the date of filing of the claim petition till the date of payment. The additional amount of compensation along with interest should be paid to the appellant without delay and not later than three months from today."

11. In the aforesaid decision, the Hon'ble Supreme Court has made it clear that, the loss of future earning has to be assessed with reference to the nature of work being performed by the injured as the same injury may affect two different persons in different way. It went to the extent of saying that loss of one leg to a person working in a office would not interfere with his work/earning capacity in same degree as in the case of a marginal former or a riksha puller. If this principle is applied to the facts of the present case, this Court finds that, there is some force in the contention raised by the learned counsel for the appellant to state that, the loss of earning capacity of the present appellant/claimant may not be calculated lesser than 100%, in view of the nature of work he had undertaken prior to accident.

12. Therefore, this Court has no hesitation to hold that, the said principle enunciated in the aforesaid judgment can very well be employed in the present facts of the case, thereby, this Court also finds that, the decision taken by the Workmen Compensation Commissioner to arrive at a percentage of loss of earning capacity to the extent of only 80% may not be justifiable, instead, it could have been fixed as 100%.

13. In that view of the matter, this Court feels that, the impugned award to the extent of declaring the earning capacity only 80% and not 100% requires modification. Resultantly, the impugned award is modified to the extent that, the appellant/claimant is entitled to full compensation considering the disability/earning capacity at 100% and accordingly, the recalculated compensation shall be paid by the 2nd respondent/Insurance Company to the appellant/claimant, which is calculated as follows:

Age factor	: 218.47
Salary	: Rs.2699.56
Loss of earning capacity	: 100%
Compensation	: $\text{Rs.}2699.56 \times 60/100 \times 218.47 \times 100/100$
Total Compensation	: Rs.3,53,863.72/- (or) Rs.3,53,864/-

Hence, the said amount of Rs.3,53,864/-, being the enhanced compensation as calculated above, shall be paid by the 2nd respondent /Insurance Company to the appellant/claimant.

14.It is brought to the notice by the learned counsel for the 2nd respondent/Insurance Company that, the amount awarded by the Workmen Compensation Commissioner has already been deposited. Therefore, the remaining amount i.e., Rs.70,773/- [Rs.3,53,864 - Rs.2,83,091 = 70,773] with interest at the rate of 12% per annum shall be deposited by the 2nd respondent/Insurance Company within a period of six weeks from the date of receipt of a copy of this judgment.

15.Accordingly, the Civil Miscellaneous Appeal is ordered to the extent indicated above. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To
The Deputy Commissioner of Labour - 2,
(Commissioner for Workmen Compensation),
Salem.

Copy To:

The Section Officer,
V.R.Section ,
High Court, Madras. सत्यमेव जयते

+1cc to M/s.R.Sreevidhya, Advocate, SR. No. 8219

RLD (CO)
RMP (20/07/2020)

C.M.A.No.1931 of 2013

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