

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.M.A. No.2496 of 2013

S.Muruganandam

... Appellant

v.

1. V.Sarala

2. United India Insurance Company Limited,
Motor Third Party Claims Hu7b,
Silingi Building, 4th Floor,
No.132, Greams Road,
Chennai - 600 006. ... Respondents

Civil Miscellaneous Appeal filed under section 30 of Workmen's Compensation Act, 1923, against the judgment and decree dated 13.02.2013 made in W.C. No.431 of 2011 on the file of the Commissioner for Workmen's Compensation [Deputy Commissioner of Labour-II], Chennai.

For Appellant : Mr. Richard Suresh Kumar

For Respondents : Ex parte - R1
Mr.C.Paranthaman - for R2
Mr.Dev. Narendran, Govt. Advocate

J U D G M E N T

To enhance the compensation awarded by the Commissioner for Workmen's Compensation [Deputy Commissioner of Labour-II], Chennai in W.C. No.431 of 2011, the claimant has filed the above Civil Miscellaneous Appeal.

2. The appellant was working as a driver under the 1st respondent and when he was driving a Tourist Car bearing Registration No. TN-20-BR-3774 belonging to the 1st respondent, he met with an accident on 25.08.2011 when a lorry bearing registration No. KA-52-6042 proceeding from the opposite direction. Due to the accident, the appellant got

injured on his head and face and he has not been able to do any work from then. Further, he has become permanently disabled. Hence, he filed Workmen's Compensation Case in W.C. No.431 of 2011 claiming compensation.

3. The Tribunal, by order dated 13.02.2013, awarded a compensation of Rs.4,53,912/-. Out of this amount, a sum of Rs.11,534/- was awarded towards medical expenses and the balance sum of Rs.4,42,378/- was awarded as pecuniary loss to the appellant.

4. Taking into consideration the permanent disability at 50%, before the Tribunal, on the side of the claimant, P.W.2 and P.W.3, who are the Doctors by Profession, were examined to establish the nature of the injuries sustained by him.

5. Challenging the award passed by the Tribunal, the claimant filed the above Civil Miscellaneous Appeal stating that he lost the eye-sight in the right eye and therefore, the Tribunal should have taken the permanent disability at 100% and not at 50%.

6. In order to establish the percentage of disability suffered by the appellant, this Court directed him to appear before the Medical Board. By order dated 05.10.2018, this Court, directed the Dean, Government Medical College, Kilpauk, Chennai, to appoint a competent team of doctors to re-examine the appellant and to furnish a report regarding the disability.

7. Pursuant to the orders of this Court, the Dean, Government Medical College, Kilpauk, Chennai, sent a report dated 13.01.2020 along with a disability certificate. On a perusal of the same, it is clear that the appellant lost his vision in the right eye. However, as per the disability certificate, the Medical Board fixed the disability at 30%.

8. The learned counsel appearing for the appellant submitted that since the appellant had lost his vision in the right eye in toto, the Tribunal should have taken the permanent disability at 100% and not at 50%. In support of his contentions, the learned counsel, relied upon a judgment reported in 2011(2) L.W. 878 [D.Shanmuga Anand v. M.Balasubramanian and another], wherein this court held as follows:-

" ... 17. Section 2(1)(1) of the Workmen Compensation Act defines 'total disablement' as such disablement, whether temporary or permanent nature as incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement.

Therefore, even if a workman suffers physical disablement to a lesser extent say 20 per cent, 40 per cent, 50 per cent, etc.; if such physical disablement itself totally incapacitates the workman from doing any work which he was capable of performing before the accident, it can be treated as total disablement.

...

23. It follows from the decisions cited supra that the mere fact that an injury is included in Part II of Schedule I of the Workmen Compensation Act does not and cannot ipso facto lead a functionary under the Workmen Compensation Act to the conclusion that no total disablement has resulted at all. In each case, the question will have to be considered whether the disablement has incapacitated the person to perform all work which he was capable of performing at the time of the accident. We have to see whether he had capability, experience, expertise and competence for performance of such other work also. Merely because a person may be able to and can possibly perform certain other works, it would be irrational to assume that a driver, who has been disabled to do driving, can perhaps work as a shop keeper or to do some other work (for which he has no competence or experience) he will not be entitled to claim that he is totally disabled under Section 2(1)(1) of the Workmen Compensation Act. In the circumstances of this case, I am satisfied that total permanent reduction in earning capacity to the extent of 100 per cent has resulted and not merely 60 per cent reduction in earning capacity as determined by the Deputy Commissioner of Labour. ..."

9. On a perusal of the said judgment, it is clear that this Court taking into consideration the case of the Hon'ble Supreme Court reported in 2010 ACJ 487 [S. Suresh v. Oriental Insurance Company Limited and another], came to the conclusion that even if the percentage of disability is less than 100%, since the claimant cannot do the work which he was doing, the permanent disability should be taken as 100%.

10. The ratio laid down by this Court in the judgment cited supra squarely applies to the facts and circumstances of the present case. Applying the ratio laid down by this Court, I am of the view that the permanent disability fixed at 50% by the Tribunal should be arrived at 100%. Accordingly, the

permanent disability is fixed at 100% and the appellant is entitled for compensation of Rs.8,84,756/- [pecuniary loss] plus Rs.11,534/- [medical expenses], i.e., Rs.8,96,290/-.

11. It is brought to the notice of this Court that the claimant had already withdrawn a sum of Rs.4,53,912/-. The 1st respondent-Insurance Company is directed to deposit the balance amount of Rs.4,42,378/- together with accrued interest as awarded by the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made by the Insurance Company, the appellant-claimant is permitted to withdraw the same.

With these observations, the Civil Miscellaneous Appeal is Allowed. No costs.

Rj

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Commissioner for Workmen's Compensation
[Deputy Commissioner of Labour-II],
Chennai.

+4cc to Mr.C.Paranthaman, Advocate C.C.No.20475

+4cc to Mr.M/s C.Richard Suresh Kumar, Advocate C.C.No.20604

BS (CO)
mst (27/05/2020)

C.M.A. No.2496 of 2013

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