

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1641 of 2016

Prabhu

..Appellant

Versus

1.Ganesan

2.United India Insurance Co. Ltd.,

A5 & A6, 2nd Floor, Appasamy Towers,
New No.27, Sir Thiyagaraya Road,
Near Old Nagesh Theatre,
T.Nagar, Chennai - 17.

..Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 30 of the Employees Compensation Act, 1923, praying to set aside the order dated 23.04.2014 made in W.C.No.261 of 2011 on the file of the learned Deputy Commissioner of Labour-II, Chennai.

For Petitioner : Mr.F.Terry Chellaraja

For R1 : Mr.Exparte before tribunal

For R2 : Mr.C.Paranthaman

JUDGMENT

Heard Mr.F.Terry Chellaraja, learned counsel for the appellant/claimant, and Mr.C.Paranthaman, learned counsel for the second respondent/Insurance Company, through Video Conferencing due to COVID-19 pandemic.

2. This Civil Miscellaneous Appeal is directed against the impugned award passed by the learned Deputy Commissioner of Labour-II, Chennai, in W.C.No.P.No.261 of 2011, dated 23.04.2014, awarding a sum of Rs.3,74,528/-, failing which, Insurance Company shall pay 12% interest after 30 days from the date of accident till the payment of said sum.

3. Learned counsel appearing for the claimant/appellant herein submitted that the claimant was employed by the first opposite party as a mason with a monthly salary of Rs.12,000/-. On 26.12.2010, while the claimant was handling iron rod, suddenly, it hit on his right eye, due to which, he sustained grievous injuries and thereafter, he was taken to Sankara

Nethralaya Ophthalmic Hospital for treatment and he was admitted as inpatient from 26.12.2010 to 30.12.2010. The first respondent herein has duly insured with the second respondent/Insurance Company and that policy bearing No.012601/41/10/01/00000364 is valid from 15.12.2010 to 14.12.2011. Therefore, on the date of accident, insurance policy was in existence, hence, the respondents 1 and 2 are liable to pay compensation to the claimant/appellant herein. Therefore, he has laid the claim petition before the learned Deputy Commissioner of Labour-II, Chennai, seeking compensation of Rs.10,00,000/- with interest at the rate of 15% per annum after 30 days from the date of accident.

4. Pointing out three errors committed by the learned Deputy Commissioner, learned counsel argued that learned Deputy Commissioner, without any justification, has wrongly fixed a meagre sum of Rs.6,115.80/- 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 Government Gazette on 31.05.2010. Therefore, in the present case, as the incident had occurred on 26.12.2010, learned Deputy Commissioner ought to have fixed monthly wages at Rs.8,000/-, he pleaded.

5. With regard to fixing of percentage of disability, he argued that list of injuries deemed to result in permanent total disablement are mentioned in Serial Nos.1 to 6 of Schedule-I Part-I of Employee's Compensation Act, 1923 (in short "the Act"), in which, Sl.No.4 states that loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential. In present case, Doctor-PW2 came to the witness box and deposed that the appellant suffered full thickness corneal tear with uveal tissues with scar, due to which, he suffered total blinding of right eye and thereby PW2 assessed the disability at 40%. Therefore, learned Deputy Commissioner, after perusing Ex.P5-disability certificate, ought to have fixed the percentage of disability at 100%, as the claimant being a mason cannot continue his avocation as done before due to complete loss his right eye-sight, which falls under the category of Sl.No.4 of Schedule-I Part-I of the Act. Therefore, the percentage of disability may be modified to 100%, instead of 40% fixed by the learned Deputy Commissioner.

6. With regard to fixation of interest, learned counsel argued that the issue of fixation of interest is no longer res-integra as it has been repeatedly held by this Court as well as Apex Court that the interest on the award amount should be

calculated after 30 days from the date of accident. Therefore, award passed by the learned Deputy Commissioner without fixing interest may be modified and 12% interest may be awarded after 30 days from the date of accident.

7. Learned counsel appearing for the second respondent/Insurance Company argued that learned Deputy Commissioner has rightly fixed the percentage of disability at 40% as per Sl.No.25 of Part-II Schedule-I of the Act, hence, challenge made by the appellant against fixing of 40% disability is not maintainable. It is further argued that the policy taken by the first respondent is non-motor policy and the said policy specifically states that the company is not liable to pay toward medical expenses of an employee for the disease or injury suffered by him. Therefore, when the first respondent has taken insurance policy with a condition that the Insurance Company would not pay any sum towards medical expenses of an employee, the claimant/appellant cannot be allowed to claim interest from date of accident excluding 30 days from the date of accident.

8. This Court is unable to accept the above said submission of the Insurance Company. So far as the interest portion is concerned, the said issue is no longer res-integra. In R.Prakasam Vs. M/s.A to Z Cargo Carriers, Chennai, and another (C.M.A.No.2558 of 2015), dated 28.06.2019, by following a decision of the Hon'ble Apex Court in the case of Oriental Insurance Company Limited Vs. Siby George and others [2012 ACJ 2126], I have held that interest on the award amount passed by the Commissioner under the Workmen's Compensation Act is payable from 31st day of the accident. Accordingly, by following the same, issue relating to interest is answered and the claimant is entitled to 12% interest after 30 days from the date of accident, namely, 26.12.2010.

9. Coming to the fixation of monthly wages, at the outset, it is to be noted that an amendment was made to Employee's Compensation Act, 1923, with effect from 18.01.2010, in and by which, minimum monthly wages has been increased to Rs.8,000/- from Rs.4,000/- and this was also subsequently notified in Government Gazette on 31.05.2010. Therefore, it is not known on what basis the learned Deputy Commissioner has fixed Rs.6115.80/- towards his monthly salary when the incident had occurred on 26.12.2010, which is admittedly much after the Gazette Notification dated 31.05.2010 issued by the Government of India fixing monthly wages at Rs.8,000/- from Rs.4,000/-. Therefore, monthly wages stands modified to Rs.8,000/-, instead of Rs.6,115.80/- fixed by the learned Deputy Commissioner.

10. With regard to fixation of percentage of disability, it is seen from the records that on 26.12.2010, while the claimant

was working under the first respondent, one iron rod hit on his right eye and sustained grievous injuries and thereafter, he was admitted as inpatient in Sankara Nethralaya Ophthalmic Hospital from 26.12.2010 to 30.12.2010. The Doctor-PW2, although assessed the disability at 40%, deposed that the appellant suffered total blinding of his right eye. Therefore, it is not in dispute that the appellant being a mason cannot continue his avocation as done before due to loss sight of his right eye. In Part I Schedule-I, list of injuries deemed to result in permanent total disablement are stated and the same are extracted below:

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT DISABLEMENT:

Sl.No.	Description of Injury	Percentage of Loss of Earning Capacity
1.	Loss of both hands or amputation at higher sites	100
2.	Loss of a hand and a foot	100
3.	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4.	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential	100
5.	Very severe facial disfigurement	100
6.	Absolute deafness	100

Serial No.4 of the above tabular column states that loss of sight to such an extent as to render the claimant unable to perform any work would result in 100% disability and the same would lead into permanent disablement. In the case on hand, as highlighted above, as per deposition of PW2-Doctor, the claimant/appellant has suffered total blinding of his right eye, therefore, the claimant being a mason cannot continue his avocation as done before. However, ignoring such a crucial aspect, learned Deputy Commissioner has wrongly fixed the disability at 40%, hence, the same stands modified to 100% disability.

11. With regard to relevant factor, at the time of incident, the claimant was aged about 17 years and therefore, learned Deputy Commissioner has rightly fixed the relevant factor at 227.49 for computing loss of income and the same is not disputed by the learned counsel for the Insurance Company.

12. In view of the aforesaid discussions, modified compensation works-out as stated below:-

Loss of income = 10,91,952/- (60/100x227.49x8000x100%)
Learned counsel for the claimant/appellant herein filed a Memo of Calculation dated 21.09.2020, in which, it is seen that the Insurance Company had already deposited the amount awarded by the learned Deputy Commissioner i.e. Rs.3,74,528/- on 08.12.2015 and the interest to the tune of Rs.2,17,347/- on 05.02.2016. In this appeal, as computed above, the claimant/appellant is entitled for the total compensation of Rs.10,91,952/- and therefore, the Insurance Company is directed to pay the said sum, less the amount already deposited, with interest at 12% per annum after 30days from the date of accident on the unpaid sum, within a period of four weeks from the date of receipt of a copy of this order.

13. In fine, for the reasons stated above, the impugned award passed by the learned Deputy Commissioner is modified to the extent mentioned above and the Civil Miscellaneous Appeal stands allowed. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Deputy Commissioner of Labour-II,
Chennai.

+2cc to Mr.C.Paranthaman, Advocate, S.R.No.30702
+1cc to M/s.M.Malar, Advocate, S.R.No.30700

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