IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
Civil Miscellaneous Appeal No.788 of 2011

C.Suresh ... Appellant/Applicant

-vs-

1.M/s.Sree Balaji Blue Metals,
Madhur Village, Thirumukoodal Post,
Uthiramerur Taluk,
Kanchipuram District. ... Respondents/1st Opposite Party

2.The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chenni-600 001. ... Respondents/2nd Opposite Party

PRAYER: Appeal is filed under Section 30 of the Workmen Compensation Act, 1923 to set aside the order passed in W.C.46/2010 dated 31.12.2010 on the file of the Deputy Commissioner of Labour-II for Workmen Compensation at Chennai.

For Appellant : Mr.S.Haridoss
For R2 : Mr.Elaveera Ravindran
For R1 : No Appearance

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O R D E R

This Appeal has been filed to set aside the Order passed in W.C.No.46 of 2010 dated 31.12.2010 by Deputy Commissioner of Labour-II for Workmen Compensation at Chennai, by which the Insurance Company / 2nd Respondent herein was directed to pay Rs.2,71,656/- with 12% interest to the Appellant herein by taking into account the loss of earning capacity at 50%.

2. The issues to be decided in this case is whether 1) the Authority is right in fixing the loss of earning capacity at 50% and 2) 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 the case of the Appellant that on 29.08.2009, when the Appellant was on duty as a Cleaner in the L&T Komatsu Bock Line (PC200 Hydraulic Excavator) in the premises of the 1st

respondent, he fell down from the Excavator, which resulted in the amputation of his left leg, besides sustaining multiple injuries all over the body. Stating that he had sustained injuries in the course of and out of employment, he had filed a claim petition before the Authority, in which the Appellant was granted the aforestated compensation.

4. It is the grievance of the Appellant that when he lost his left leg, the grant of compensation by taking into account the loss of earning capacity as 50% is arbitrary in nature, he is totally disabled to do any job and therefore, 100% loss of earning capacity should be taken note of for the purpose of compensation. Moreover, the Authority had not granted interest from the date of accident, which is contrary to the judgment of the Full Bench of this Court.

5. Learned counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in the case of Saberabibi Yakubbhai Shaikh and others vs. National Insurance Company Ltd. and others, reported in (2014) 2 SCC 298 to state that the appellant is entitled to 12% interest from the date of accident and in the said judgment, it has been observed as follows:

> "8. We have perused the aforesaid judgment. We are of the considered opinion that the aforesaid judgment relied upon by the learned Counsel for the Appellants is fully applicable to the facts and circumstances of this case. This Court considered the earlier judgment relied upon by the High Court and observed that the judgments in the case of National Insurance Co. Ltd. v. Mubasir Ahmed MANU/SC/0759/2007 : (2007) 2 SCC 349 and Oriental Insurance Co. Ltd. v. Mohd. Nasir MANU/SC/0899/2009 : (2009) 6 SCC 280 were per incuriam having been rendered without considering the earlier decision in Pratap Narain Singh Deo v. Srinivas Sabata MANU/SC/0021/1975 : (1976) 1 SCC 289. In the aforesaid judgment, upon consideration of the entire matter, a four-judge Bench of this Court had held that the compensation has to be paid from the date of the accident.
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> 9. Following the aforesaid judgments, this Court in Oriental Insurance Co. Limited v. Siby George and Ors. (supra) reiterated the legal position and held as follows:

"11. The Court then referred to a Full Bench decision of the Kerala High Court in United India Insurance Co. Ltd. v. Alavi and approved it insofar as it followed the decision in Pratap Narain Singh Deo.

12. The decision in Pratap Narain Singh Deo was by a four-judge Bench and in Valsala K. by a three-judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in Mubasir Ahmed and Mohd. Nasir, each of which was heard by two Judges. But the earlier decisions in Pratap Narain Singh Deo and Valsala K. were not brought to the notice of the Court in the two later decisions in Mubasir Ahmed and Mohd. Nasir.

13. In the light of the decisions in Pratap Narain Singh Deo and Valsala K., it is not open to contend that the 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. The decisions in Mubasir Ahmed and Mohd. Nasir insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala K. do not express the correct view and do not make binding precedents."

10. In view of the aforesaid settled proposition of law, the appeal is allowed and the judgment and order of the High Court is set aside. The Appellants shall be entitled to interest at the rate of 12% from the date of the accident."

6. Learned counsel for the 2nd Respondent / insurance company has contended that there is no proof adduced on the side of the Appellant that he was employed under the 1st respondent and he did not possess a valid licence at the time of accident. It was further contended that with a view to cheat the insurance company, the appellant and the 1st respondent colluded together and acted and attempted to misuse the policy. Thus, it was prayed that the present appeal is liable to be dismissed.

7. Heard the learned counsel for the Appellant and the learned counsel appearing for R2 and perused the material documents available on record.

8. 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.

9. 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 Appellant has questioned the order of the Authority on the ground that the loss of earning capacity fixed as 50% is erroneous and interest of 12% for the compensation must be granted from the date of accident and not from the date of order of the Authority.

10. The disability certificate has been marked on the side of the appellant as Ex.A.5 and since the injury sustained by the Appellant is a scheduled injury, viz., amputation of left leg, the Authority had chosen not to take into account the evidence of Doctor (A.W.2). Further, the Authority had fixed the loss of earning capacity as 50% in the light of Schedule I Part II (Sl.No.20), which empowers the authority to arrive at such fixation on the basis of the injury deemed to result in permanent partial disablement and Serial No.20 contemplates amputation below knee with stump exceeding 8.89cms, but not exceeding 12.70cms. The Authority has rightly fixed the loss of earning capacity as 50%, which is fair and reasonable, warranting no modification by this Court. As the Appellant had worked as a Cleaner, the fixation of his salary as Rs.4000/- in terms of the Government Order then in force is perfectly valid and this Court cannot exercise the powers of legislation so as to increase or reduce the salary fixed by the authority in consonance with the Government Order.

11. 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.

12. 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. It was represented that the insurance company has deposited the amount within 30 days. 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.

13. 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.

14. 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. 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.

15. In the result, the Civil Miscellaneous Appeal is dismissed and the Order passed in W.C.No.46 of 2010 dated 31.12.2010 by Deputy Commissioner of Labour-II for Workmen Compensation at Chennai is hereby upheld. However, it is open to the Appellant to claim interest from the employer from the date of accident till the date of deposit by the insurance company. The amount shall be released to the Appellant within a period of two weeks from the date of receipt of a copy of this order. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To:

The Deputy Commissioner of Labour-II for Workmen Compensation, Chennai.

copy to
The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.K.Varadha Kamaraj Advocate sr7306
+1 cc to Mrs.Elveera Ravindran Advocate sr6595

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