IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.NOS.2143 & 2437 OF 2016

The National Insurance Company Limited
(T.P.Cell)
No.758, Anna Salai .. Appellant in CMA No.2143 of 2016 &
Chennai 600 002 2nd Respondent in CMA No.2437 of 2016

-vs-

1. Seenu alias Srinivasa .. 1st Respondent in CMA No.2143 of 2016 & Appellant in CMA No.2437 of 2016

2. Global Decorators
No.562/928, P.H.Road
Arumbakkam
Chennai 600 106 .. 2nd Respondent in CMA No.2143 of 2016 & 1st Respondent in CMA No.2437/2016

3. True Value Homes India Pvt.Ltd., (TVH)
TVH Novella,
No.16/17, Third Cross Street
R.A.Puram
Chennai 600 028 .. 3rd Respondent in CMA Nos.2143 & 2437 of 2016

Prayer:-

Memorandum of Grounds of Civil Miscellaneous Appeals filed under Section 30 of the Employees Compensation Act, against the order dated 26.05.2016 made in W.C.No.36 of 2013 on the file of the Commissioner for Workmen's Compensation-I cum Deputy Commissioner of Labour-I, Chennai 600 006.

For Appellant(s) :: Mrs.R.Rathna Thara in CMA No.2143/2016 & Mr.S.Vijayakumar in CMA No. 2437/2016

For Respondents :: Mr.S.Vijayakumar for R1 in CMA No.2143/2016 & Mrs.R.Rathna Thara for R2 in CMA No.2437/2016
No appearance for R2 in CMA No.2143/2016 & for R1 in CMA No.2437/2016 and for R3 in CMA Nos.2143 & 2437/2016

JUDGMENT

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. These two civil miscellaneous appeals in C.M.A.Nos.2143 & 2437 of 2016 are taken up for final disposal, as they challenge the impugned award passed by the Commissioner for Workmen's Compensation-I cum Deputy Commissioner of Labour-I, Chennai dated 26.5.2016 made in W.C.No.36 of 2013. For convenience, the parties will be hereinafter referred to as "the Injured/ Claimant" and "the Insurance Company" in this judgment.

3. C.M.A.No.2437 of 2016 has been filed by Mr.Seenu alias Srinivasan, the Injured/Claimant seeking enhancement of compensation, as he is aggrieved by the award amount of Rs.6,09,610/- and also for payment of interest at the rate of 12% per annum, as the learned Deputy Commissioner of Labour-I has directed the Insurance Company to deposit the award amount within 30 days from the date of receipt of award, failing which the Injured/Claimant would be entitled to get interest at the rate of 12% per annum on and from 30 days after the date of accident, that is incorrect and also against the settled legal position and also against the legal provision. Arguing further, learned counsel appearing for the Injured/Claimant stated that when the Injured/Claimant was working as Painter on 28.9.2012 at about 12.00 hours with the third opposite party, namely, True Value Homes India Private Limited (TVH) building, he slipped and fell down from 30 feet height, resultantly he sustained severe fracture on his left ankle, pelvic left leg cut injury and also another fracture L5 in the spinal cord. Although he was taken immediately to the nearby Government Hospital at Sriperumbudur, Kanchipuram District, after taking first aid treatment, he was rushed to the Rajiv Gandhi Government General Hospital, Chennai on the same day i.e., 28.9.2012 and till 3.10.2012, he was taking treatment as an in-patient and he also took further treatment at the private hospitals in Kanchipuram by spending thousands of rupee for the treatment and also the charges for the nurse and attender. When the claim was made before the Commissioner for Workmen's Compensation-I for awarding a sum of Rs.10 lakhs with interest at the rate of 12% per annum on and

from 30 days after the date of accident, making it clear that in view of the aforementioned multiple injuries including the fracture of L5 in the spinal cord, resultantly he was not able to walk without using a stick, the learned Deputy Commissioner of Labour-I, against the medical evidence that was supported by the version of P.W.3 Dr.Thiagarajan, who also certified 70% disability, without any reason, has reduced the percentage of disability to 65% and also fixed only Rs.8,000/- as the monthly wage, as against the claim of Rs.700/- per day which works out to Rs.21,000/- per month, thereby arrived at the quantum of compensation wrongly, for which the Injured/Claimant has been put to huge problem. Therefore, while enhancing the disability percentage from 65% to 100%, as the Injured/Claimant is unable to rise from his sitting posture, as he has lost the avocation of painting work, this Court, he pleaded, should fix the percentage of disability at 100% and accordingly, the quantum of compensation should be fixed. Again coming to the interest part, learned counsel appearing for the Injured/Claimant pleaded that when it is the settled legal position, as per Section 4-A (3) of the Workmen's Compensation Act, 1923, that the interest and penalty payable under sub-section (3) shall be paid to the employee or his dependent, as the case may be, 30 days after the accident, the learned Deputy Commissioner of Labour-I has forgotten to follow even the mandatory provision, because he has directed the payment of interest at the rate of 12% per annum in the event of failure on the part of the Insurance Company in not paying the amount within 30 days from the date of receipt of award, that is not the correct legal position. Concluding his arguments, he further argued that when M/s Global Decorators is the employer of the Injured/Claimant, since M/s Global Decorators has taken the workmen's compensation policy from the Insurance Company and the said Policy No.500505/41/12/8600000132 was valid from 10.8.2012 to 9.2.2013 and for the reason that the policy has covered the accident that took place on 28.9.2012, the Insurance Company is liable to pay the compensation to the Injured/Claimant on behalf of M/s Global Decorators. But the Insurance Company, after issuing the aforementioned policy in favour of M/s Global Decorators has refuted and denied their liability to pay, on the ground that when M/s True Value Homes India Private Limited (TVH) being the principal employer and M/s Global Decorators being the contractor, when the Injured/Claimant was serving only under the contractor, there was no employer-employee relationship either through M/s True Value Homes India Private Limited or through M/s Global Decorators. But this argument was rightly considered by the learned Deputy Commissioner of Labour-I and overruling the same, the impugned award has been passed. But the award has substantially reduced the quantum of compensation. Hence, the appeal filed by the Injured/Claimant deserves to be allowed by enhancing the compensation both on the quantum of salary as deposed by P.W.2 stating that everyday, the Injured/Claimant was paid Rs.700/- wages and the payment of interest also should be properly settled holding that the Injured/Claimant is entitled to get the interest on and from 30 days after the date of the accident.

4. Opposing the above prayer, Mrs.R.Rathna Thara, learned counsel appearing for the Insurance Company, assailing the impugned award, contended that the learned Deputy Commissioner of Labour-I, misconstruing erroneously, has reached a conclusion that the principal employer, M/s True Value Homes India Private Limited (TVH) is not liable and fastened the liability for payment of compensation on the Insurance Company. When the principal employer alone is liable to pay the compensation, as per Section 12(1) of the Workmen's Compensation Act, at least when the learned Deputy Commissioner of Labour-I has passed the award directing the Insurance Company to pay the compensation to the Injured/Claimant, liberty should have been given to the third opposite party as the principal employer to recover from the contractor or sub contractor concerned. Arguing further, she stated that when it was pleaded that the principal employer has employed the Injured/Claimant, it is for the principal employer to bear the compensation arising under the Workmen's Compensation Act in respect of liability towards compensation even if the Injured/Claimant was engaged by the contractor or the sub contractor under the principal employer. Even though the Injured/Claimant was working under the contractor at the time of sustaining injuries, the principal employer's liability cannot be overlooked. When the capacity of the third opposite party as the principal employer has not been specifically disputed or denied in the pleadings, the learned Deputy Commissioner of Labour-I ought to have directed the principal employer to pay the compensation instead of the Insurance Company. But without assigning any reason whatsoever, the learned Deputy Commissioner of Labour has wrongly held that the third opposite party-principal employer is not liable to pay any compensation. Again referring to the insurance policy dated 10.8.2012, Mrs.R.Rathna Thara also pleaded that when the Insurance Company has clearly issued the employee's compensation insurance policy with clear terms and conditions mentioning that the insured means such person or persons in direct employment under the insured, but shall not include any person employed under a contractor or sub contractor of the insured unless specifically covered by the schedule and by any endorsement, the learned Commissioner ought not to have fastened the liability on the Insurance Company. Even assailing the correctness of the finding given by the learned Deputy Commissioner of Labour-I, she further argued that P.W.3 Dr.Thiagarajan, who has not given treatment to the Injured/Claimant, has come to the witness box and certified that the Injured/Claimant sustained 70% disability and the learned

Deputy Commissioner of Labour-I, accepting his evidence, while reducing the percentage of disability to 65%, has wrongly awarded the compensation. When it was the consistent case of the Insurance Company from the Deputy Commissioner of Labour-I till now that neither the Injured/Claimant nor P.W.2 was ever employed as workman under the sub contractor, the bogus claim has been wrongly allowed, when there was no supporting evidence produced to show that either the Injured/Claimant or P.W.2 had worked with the sub contractor while painting the third opposite party's TVH building. Concluding her arguments, Mrs.R.Rathna Thara also stated that as far as payment of interest at the rate of 12% per annum is concerned, the employer alone can be held responsible and not the Insurance Company. Whether it is on and from 30 days after the date of accident or as per the award passed by the learned Deputy Commissioner of Labour-I, the interest portion has to be paid only by the employer, but not by the Insurance Company.

5. Having heard learned counsel for the parties, this Court could see that when there was a huge objection raised by the Insurance Company that neither the Injured/Claimant Seenu alias Srinivasan nor his supporting witness P.W.2 worked either under the principal employer or under the contractor while painting the third opposite party TVH building, there was no acceptable document produced before the learned Deputy Commissioner of Labour-I that P.W.2 was working along with the Injured/Claimant Seenu alias Srinivasan on 28.9.2012 while the Injured/Claimant fell down from the third opposite party TVH building. However, the subsequent evidence that he was immediately taken to the Government Hospital, Sriperumbudur on 28.9.2012 for first aid treatment and subsequently he was taken to the Rajiv Gandhi Government General Hospital, Chennai where he continued his treatment from 28.9.2012 to 3.10.2012 as an in-patient, makes the injuries sustained by the Injured/Claimant on the fateful day on 28.9.2012 as acceptable. However, with regard to the monthly salary, although it was pleaded by P.W.2 Mr.Saravanan that both the Injured/Claimant Seenu alias Srinivasan and P.W.2 were paid Rs.700/- as daily wages, there was no substantial evidence produced to fortify the payment of daily wage of Rs.700/- by the employer. Therefore, the learned Deputy Commissioner of Labour-I, accepting the evidence adduced by P.W.1, P.W.2 and P.W.3-Dr.Thiagarajan that the Injured/Claimant Seenu alias Srinivasan, while falling down from the third opposite party TVH building on 28.9.2012, sustained severe fracture on the left ankle, fracture on his hip and the pelvic left leg, cut injuries and also fracture on L5 spinal cord, has fixed 65% disability. Since the Injured/Claimant was aged about 38 years on the date of accident, he has rightly taken the factor 189.56 and also finding no supporting evidence to support the wages as pleaded, has rightly fixed Rs.8,000/- as the

monthly wages and finally arrived at the quantum of compensation at Rs.6,09,610/- along with interest at the rate of 12% per annum only if the Insurance Company failed to make the deposit within 30 days from the date of award. Since the law is very clear that the said award amount shall carry interest at the rate of 12% per annum on and from 30 days after the date of accident and not from the date of award, while modifying the direction of the learned Deputy Commissioner of Labour towards the interest part alone, the C.M.A.No.2437 of 2016 filed by the Injured/Claimant stands disposed of directing the Insurance Company to pay interest at the rate of 12% per annum on the award amount on and from 30 days after the date of accident and till the date of deposit, to the credit of the W.C.No.36 of 2013 on the file of the Commissioner for Workmen's Compensation-I cum Deputy Commissioner of Labour-I, Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the Injured/Claimant is entitled to withdraw the same. For the reasons aforementioned, the C.M.A.No.2143 of 2016 filed by the Insurance Company stands dismissed. Consequently, C.M.P.No.15409 of 2016 is also dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner for Workmen's Compensation-I
cum Deputy Commissioner of Labour-I,
Chennai 600 006.

2. The National Insurance Company Limited (T.P.Cell)
No.758, Anna Salai,
Chennai 600 002.

+1cc to M/s.K.A.Balasubramanian, Advocate, S.R.No.31183

C.M.A.Nos.2143 & 2437 of 2016

SJ(CO)
CS/02/12/2020