

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

CMA.NO.3073 of 2019

G.Anbu

... Appellant

vs

1.J.Baskar

... Respondents

2.United India Insurance Company,
No.134, Silingi Buildings, 4th Floor,
Chennai-600 006.

Civil Miscellaneous Appeal filed against the award dated 07.09.2018 made in W.C.No.63/2013 on the file of the Deputy Commissioner for Workmen's Compensation-I, Chennai-6.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been directed against the award dated 07.09.2018 made in W.C.No.63/2013 on the file of the Deputy Commissioner for Workmen's Compensation-I, Chennai-6.

2. The appellant, was engaged as a driver by the 1st respondent in his Auto bearing Registration No.TN-09-AL-0104 and while he was on duty on 11.01.2013 at about 17.00 hours, the said vehicle met with an accident at Nandanam Pasumpon Muthuramalingam Road in front of Tihuge Swing Restaurant by dashing against a Car, bearing Registration No.TN-22-CB-4565, as a result, the appellant sustained grievous injuries, namely, 1. Closed fracture proximal tibia; 2. Multiple injuries in all over the body. Thereafter, he took first aid treatment in Venkateswara Hospital, Chennai. Subsequently, he has taken in-patient treatment in Government General Hospital, Chennai. Therefore, the appellant filed the claim petition before the Deputy Commissioner of Labour-I, Chennai in W.C.No.63 of 2013 claiming compensation on the ground that the accident occurred during the course of his employment and the said vehicle was insured with the 2nd respondent Insurance Company. The Deputy Commissioner of Labour-I, Chennai passed an award on 07.09.2018 directing the second respondent Insurance company, being the

insurer of the Auto bearing Registration No. TN-09-AL-0104 owned by the first respondent, to deposit the compensation of Rs.2,73,730/-, within a period of thirty days from the date of receipt of a copy of the award, failing which the second respondent is liable to pay simple interest at the rate of 12% per annum on the compensation amount from the date of accident till the date of deposit. Aggrieved over the same, the present appeal has been filed.

3. Though several grounds have been raised in the present Civil Miscellaneous Appeal, today, the learned Counsel appearing for the appellant submitted that he confines his argument only on the minimum wages fixed at Rs.6,784/-. He further submitted that the learned Commissioner has wrongly fixed the appellant's minimum wages at Rs.6784/- p.m., without taking into account that minimum wages has been fixed at Rs.8,000/- p.m. as per the Notification of the Labour and Employment Department of the Central Government dated 18.01.2020, as a result the quantum of compensation has been drastically reduced. Therefore, the present appeal has been filed.

4. The learned Counsel for the appellant also argued that when the accident had occurred at about 17.00 hours on 11.01.2013 at the time of employment of the appellant as driver in an Auto bearing Registration No.TN-09-AL-0104 belonging to the 1st respondent while he was proceeding towards Nandanam Pasumpon Muthuramalingam Road in front of Tihuge Swing Restaurant, by colliding with a Car bearing Registration No.TN-22-CB-4565, he sustained grievous injuries, namely, 1. Closed fracture proximal tibia; 2. Multiple injuries in all over the body. Thereafter, he took first aid treatment in Venkateswara Hospital, Chennai. Subsequently, he has taken in-patient treatment in Government General Hospital, Chennai for the period from 12.01.2013 to 26.01.2013. It goes without saying that the appellant has lost his income. Therefore, the learned Commissioner, taking into account that the accident has taken place 3 years later from the date of issuance of the Central Government Notification dated 18.01.2010, i.e. on 11.01.2013 ought to have fixed the monthly income of the appellant at Rs.8,000/- instead Rs.6,784/-. Therefore, since the fixation of minimum wages by the learned Commissioner is running contrary to the Notification dated 18.01.2010, the same is liable to be modified as Rs.8,000/- by allowing the present Civil Miscellaneous Appeal to that extent.

5. No one appeared for the respondents even though notice was served on them. Earlier, on two occasions also, when the matter was listed, neither the owner of the vehicle nor the Insurance Company appeared before this Court that means they do not have any objection for allowing the present appeal.

6. The only substantial question of law that arises for consideration is whether the learned Deputy Commissioner of Labour-I is right in fixing the monthly income of the deceased as Rs.6784/-?

7. At the outset, the facts that the appellant was engaged as a driver by the 1st respondent in his Auto bearing Registration No.TN-09-AL-0104 and while he was on duty on 11.01.2013 at about 17.00 hours, the said vehicle met with an accident at Nandanam Pasumpon Muthuramalingam Road in front of Tihuge Swing Restaurant by dashing against a Car, bearing Registration No.TN-22-CB-4565, as a result, the appellant sustained grievous injuries and taken in-patient treatment in Government General Hospital, Chennai for the period from 12.01.2013 to 26.01.2013 due to which he lost his employment are not in dispute. Further, the appellant filed the claim petition before the Deputy Commissioner of Labour-I, Chennai in W.C.No.63 of 2013 claiming compensation and a compensation of Rs.2,73,730/- with interest was awarded are also not in dispute. But the only contention raised by the learned Counsel for the appellant is when the Notification dated 18.01.2010 was issued by the Central Government fixing Rs.8,000/- as minimum wages payable to all employees, while met with an accident during the course of their employment, the same was not taken into account while calculating the loss of income of the appellant, therefore, the quantum of compensation has been drastically reduced.

8. In this regard, on a perusal of the entire typed set of papers, this Court is of the view that the minimum wages has to be fixed at Rs.8,000/- as per the Central Government Notification dated 18.01.2010, but prima facie, it appears that the learned Commissioner has fixed Rs.6784/- as a monthly salary of the appellant which is an apparent mistake on the face of the records. Therefore, the same is modified as Rs.8,000/- p.m., however, there was no change in other heads. Now fixing Rs.8,000/- as a monthly minimum wages of the appellant, his loss of earning capacity is calculated as under :

- | | |
|-------------------------|--------------|
| 1. Age | : 37 |
| 2. Relevant factor | : 192.14 |
| 3. Salary | : Rs.8,000/- |
| 4. Permanent Disability | : 35% |

Total : $60/100 \times 192.14 \times 8,000/- \times 35/100 = \text{Rs.}3,22,795/-$

Therefore, the appellant is entitled to the compensation of Rs.3,22,795/- along with interest at 12% p.a. as awarded by the learned Deputy Commissioner-I, Chennai. Accordingly, the substantial question of law is answered in favour of the

appellant.

9. At this stage, the learned Counsel for the appellant submitted that the earlier award amount was already deposited and withdrawn by the appellant and only the balance enhanced amount has to be deposited.

10. In view of the above, the 2nd respondent Insurance Company is directed to deposit the balance enhanced amount with interest as awarded by the learned Deputy Commissioner No.I, Chennai, within a period of four weeks from the date of receipt of a copy of this Order and on such deposit being made, the appellant is permitted to withdraw the same.

11. With the above modification, the Civil Miscellaneous Appeal is allowed. No costs.

-Sd/-

Assistant Registrar (CS)

// True Copy //

Sub Assistant Registrar

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To

1.The Deputy Commissioner for Workmen's Compensation-I,
Chennai-6.

2.The United India Insurance Company,
No.134, Silingi Buildings, 4th Floor,
Chennai-600 006.

+1 C.C. to M/S.MALAR Advocate SR.NO.37006

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CMA.No.3073/2019

UM (CO)

UM (16.12.2020)

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