

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2081 of 2014

Mr.Harikrishnan
S/o Dhamodharan

..Appellant

-vs-

1. Mr.Jegadeesan

2. The New India Assurance Company Limited
No.372, T.T.K.Salai
Alwarpet
Chennai 600 018

..Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the award dated 17.12.2013 made in W.C.No.266 of 2007 on the file of the Deputy Commissioner of Labour-I, Chennai.

For Appellant :: Mrs.A.Subadra for M/s M.Malar

For Respondents :: Mr.M.Krishnamoorthy for R2
R1 - Ex parte

JUDGMENT

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

2. This civil miscellaneous appeal is directed against the impugned award dated 17.12.2013 passed in W.C.No.266 of 2007 by the Deputy Commissioner of Labour-I, Chennai fixing a compensation of Rs.2,18,086/- without granting interest at the rate of 12% per annum on and from 31st day of the accident.

3. Mrs.A.Subadra, learned counsel appearing for the appellant, placing three arguments, prayed this court to allow the civil miscellaneous appeal. Firstly, she contended that when the claimant Mr.Harikrishnan was working as loadman in the Tata 407 van bearing Registration No.TN-04-L-4288 belonging to the opposite party, on 17.11.2006 at about 8.10 hours, due to

the rash and negligent driving of the driver of the vehicle, who lost control of the van, resultantly, the van capsized and consequently, the appellant sustained grievous injuries, namely, Grade IIIB compound fracture in right leg both bones and multiple injuries all over the body. Therefore, he was rushed to the Government General Hospital, Chennai, wherein he was taking treatment from 17.11.2006 till 29.11.2006. During that time, he was treated for wound debridement and external fixation. Again he was advised to come back to hospital on 29.1.2007 for fibular grafting. Thereafter, he was admitted as inpatient on 23.7.2007 and underwent surgery on 22.8.2007 and got discharged on 25.8.2007, as per the discharge certificate produced before the Deputy Commissioner of Labour-I, Chennai. Learned counsel appearing for the appellant, continuing her arguments, submitted that the appellant being a loadman sustained grievous injuries and also underwent ilizarov bone transplant. That shows that the appellant has permanently lost his earning capacity. However, when 60% disability has been fixed, the Deputy Commissioner of Labour-I, without even appreciating that the appellant sustained multiple injuries and has lost his earning capacity permanently, reduced the disability to 50%, which is unjustified, for the reason that the injured appellant had sustained fracture on his right leg and multiple injuries and for which, all the time, he was residing in the hospital, as per the discharge summary, the Deputy Commissioner of Labour-I, Chennai should have fixed 100% disability. In support of her contention, she has also relied upon Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923 for the proposition that when permanent disablement has resulted from the injuries, the disability should be assessed at 100%, which has not been done by the Deputy Commissioner of Labour-I, Chennai, as a result, small amount of compensation has been awarded. Secondly, when the accident took place on 17.11.2006, the Deputy Commissioner of Labour-I, without considering the fact that the appellant has claimed Rs.4,000/- as the monthly wages, as per the notification issued by the Central Government stipulating the maximum wages, that came into effect from 8.12.2000, has wrongly fixed the wages at Rs.3,689/-, as a result, the appellant, who has lost his right leg permanently, has been paid with an unreasonable small amount of compensation, with which he will not be able to lead the rest of his life. Thirdly, when interest on the quantum of compensation has not been awarded, as per Section 4-A(3) of the Workmen's Compensation Act, which says that the interest on the compensation payable will accrue from the 31st day of the accident, but in the present case, the Deputy Commissioner of Labour-I, Chennai, while allowing the claim petition, generally directed the insurance company to pay interest only if the compensation amount is not deposited within 30 days of the order, which is contrary to Section 4-A(3) of the Workmen's Compensation Act.

4. Mr.M.Krishnamoorthy, learned counsel appearing for the second respondent Insurance Company, replying to the third submission made by Mrs.A.Subadra, learned counsel appearing for the appellant that the Deputy Commissioner of Labour-I, Chennai has failed to award interest @ 12% per annum from the 31st day of the accident, fairly conceding to the legal position that the Deputy Commissioner should have awarded 12% interest per annum on the compensation from the 31st day of the accident, argued on other points. Secondly, he contended that the appellant cannot as a matter of right merely claim the monthly wages of Rs.4,000/- on the basis of the notification issued by the Central Government, because that is the maximum wages payable on the proven documents. But, in the present case, when it was claimed by the appellant that he was drawing a sum of Rs.4,000/- as the monthly wages, there was no evidence whatsoever produced by the opposite party, therefore, the Deputy Commissioner of Labour-I has rightly fixed the amount of wages at Rs.3,689/-, which need not be altered. Thirdly, opposing the argument of the learned counsel appearing for the appellant to alter the percentage of disability, he stated that when the qualified medical practitioner has certified only 60% disability suffered by the injured claimant, the Deputy Commissioner of Labour-I, considering the fact that the injured was only a loadman and he also recovered from the injuries on the date of passing the award, has reduced the percentage of disability from 60% to 50%, that need not be interfered with. In support of his submission, he also referred to a Division Bench judgment of this Court in New India Assurance Company Ltd., v. Ponammal, 2004 (1) TNMAC 42 for the proposition that when the percentage of disability has been fixed by the qualified medical expert, it cannot be altered by this Court and on that point the appeal cannot be entertained.

5. Having heard the learned counsel for parties, this Court, agreeing with the contention made by the learned counsel for parties that the Deputy Commissioner of Labour-I, Chennai has wrongly omitted to award interest on the compensation amount at the rate of 12% per annum from the 31st day of the accident, as per Section 4-A(3) of the Workmen's Compensation Act, hereby directs the learned counsel appearing for the second respondent-Insurance Company to pay interest on the compensation amount to be fixed by this Court at the rate of 12% per annum on and from the 31st day of the accident, as it is stated that the Insurance Company had already deposited the entire compensation amount awarded before the Deputy Commissioner of Labour-I, Chennai. Secondly, coming to the contention as to the fixation of wages, the Deputy Commissioner of Labour-I, considering the fact that the appellant was only employed as a loadman in the Tata 407 van bearing Registration No.TN-04-L-4288, has fixed the wages at

Rs.3,689/- due to the non-submission of salary certificate by the opposite party. However, this Court, in similar circumstances, taking note of the fact that the Central Government has issued a notification as to the maximum fixation of wages that came into effect from 8.12.2000, has fixed the wages at Rs.4,000/-. Therefore, when the accident in the present case took place on 17.11.2006 and considering the fact that generally loadmen are not being paid with vouchers, this Court is inclined to fix the monthly wages of the appellant at Rs.4,000/-, instead of Rs.3,689/- fixed by the Deputy Commissioner of Labour-I, Chennai.

6. Moving to the next contention made by the learned counsel appearing for the appellant as to the fixation of percentage of disability, it is relevant to refer to Explanation-II of Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923, which reads as follows:-

"(c) Where permanent partial disablement results from the injury(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

Explanation II.-In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;"

7. The discharge summary filed by the appellant before the Deputy Commissioner of Labour-I, Chennai, which is marked as Ex.P6 clearly shows that immediately after the appellant met with an accident and sustained grievous injuries, he was taken to the Government General Hospital, Chennai and admitted on 17.11.2006, where he was taking treatment till 29.11.2006 as inpatient, as he was diagnosed with Grade III-B compound fracture of both bones in right leg, for debridement and external fixation of the wound. Thereafter, he was regularly taking treatment as out-patient. Once again he was advised to get admitted on 29.1.2007 for fibular grafting. In the meanwhile, he was advised to go for Ihzarov bone transplant. Thereafter, he was again admitted to the hospital on 23.7.2007 for fibular plating and bone grafting, tricertical grafting fibula and external fixation and he also underwent a surgery on 23.8.2007 and was discharged on 25.8.2007 and that the treatment

continued till 2008. Since the appellant repeatedly got admitted to the hospital on two spells as mentioned above and also underwent multiple surgeries, as per Explanation-II of Section 4(1)(c)(ii), which says that in assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I; and that Section 4(1)(c)(ii) says that in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury, considering the fact that the appellant sustained grievous injuries in the accident that took place on 17.11.2006 and was taking treatment till the year 2008 almost for a period of two years, he may not be able to continue his loadman job. Therefore, this Court, accepting the percentage of disability fixed by the qualified medical practitioner at 60%, confirms the said percentage of disability, instead of 50% fixed by the Deputy Commissioner of Labour-I. Accordingly, modifying the award, the compensation payable to the appellant is worked out as follows:-
Compensation:- $60 / 100 \times 4000 \times 197.06 \times 60 / 100 = \text{Rs.}2,83,766/-$

8. The learned counsel appearing for the second respondent-Insurance Company is directed to deposit the compensation amount of Rs.2,83,766/-, which shall carry interest at the rate of 12% per annum on and from the 31st day of the accident, after deducting the amount already deposited, to the credit of the W.C.No.266 of 2007 before the Commissioner for Workmen's Compensation / Deputy Commissioner of Labour-I, Chennai 600 006, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is entitled to withdraw the entire amount. With this direction, the civil miscellaneous appeal stands allowed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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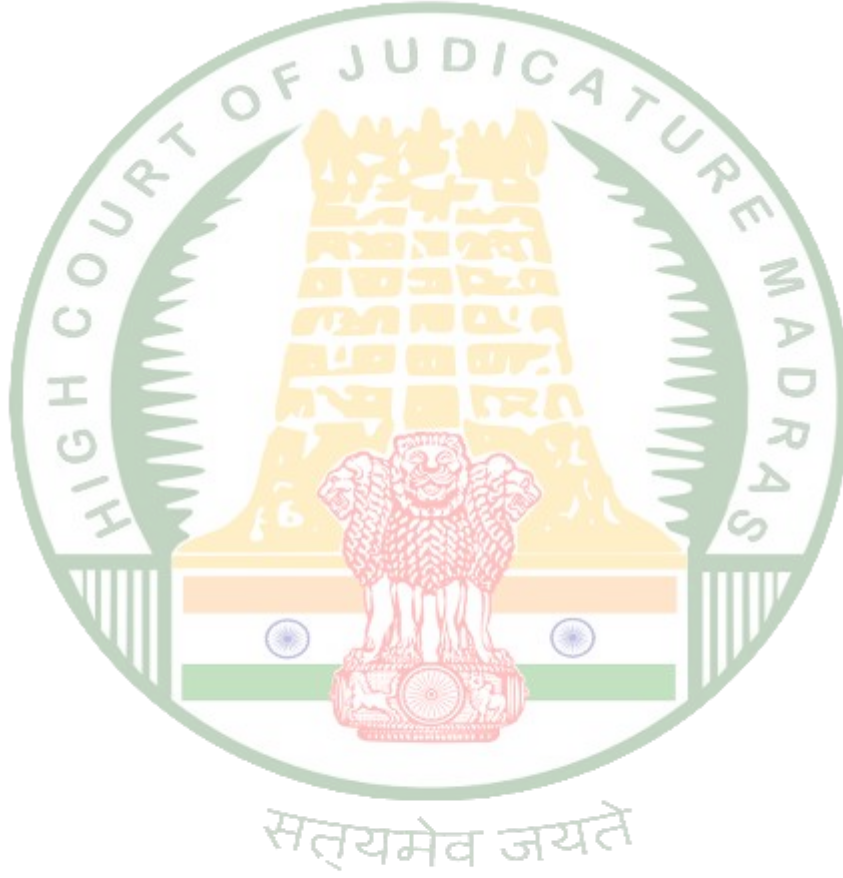
To

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

+1 CC to Ms.M. Malar, Advocate sr 41471.
+1 CC to Mr.M.Krishnamoorthy, Advocate sr 41465.

C.M.A.No.2081 of 2014

BS (CO)
SP (08/01/2021)



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