

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.01.2020
CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
C.M.A. No.3437 of 2019

Singaravel

... Appellant/Appellant

vs.

1.M.Mohankumar

2.The Manager,

The New India Assurance Co. Ltd.

7-BK, Building

Syndicate Bank Upstairs

Gugai, Salem - 636 006

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1923 against the order dated 04.09.2018 passed in W.C. No.218 of 2016 on the file of Commissioner for Employees' Compensation & Joint Commissioner, Salem.

For Appellant : Mr.C.Thangaraju
for Mr.Meenakshi Sundaram

For Respondent : Mr.Elveera Ravindran for R2
No Appearance for R1

J U D G M E N T

Appellant has come forward with the present appeal, challenging the order of the Authority under the Workmen's Compensation Act, 1923 dated 04.09.2018 made in W.C. No.218 of 2016.

2. Two grounds have been raised in the appeal. Firstly, the Authority ought to have fixed the monthly income of the injured as Rs.22,500/- and not at Rs.8,000/-. Even though such ground has been taken, no arguments have been advanced on that. Even assuming that such an argument is advanced and assuming that the salary of the appellant was Rs.22,500/-, wages can be fixed only at Rs.8,000/- per month in terms of Section 4(1B) of the Workmen's Compensation Act, 1923. Only with effect from 3.1.2020, the wages under the said provision, namely Section 4 (1B), has been increased to Rs.15,000/- and it cannot be given

effect to retrospectively.

3. The other issue taken by the appellant is that the authority was wrong in arriving at the permanent disability at 38% when there is functional disability at 100%. The petitioner has produced a disability certificate dated 29.1.2018, which was not at all marked before the lower court. The order has been pronounced by the authority on 04.01.2018. The petitioner being driver, suffered an accident on 18.11.2015 and there is no evidence produced by him that there was continuous treatment till the date of the order. Even prior to the arguments before the authority, the petitioner could have reopened the matter for the purpose of letting in additional documents to substantiate his injury and the continuous treatment and the witness would have been cross-examined by the insurance company. By producing a disability certificate across the bar, which is dated 29.1.2018 issued by C.M. Hospital, this court cannot render any finding, as to the genuineness of the certificate, as the same has got to be proved by means of evidence.

4. That apart, even assuming for the sake of argument that the disability certificate has got to be taken, it has been stated that he was suffering from permanent disability at 40%. However, the certificate, as such, cannot be taken note of by this court without being subject it to cross-examination and this court, is not inclined to remand this matter on that score, as the appellant did not evince any interest to establish the case with regard to the continuous treatment on the injuries suffered, this court is of the view that the authority has rightly fixed the disability at 38%, which cannot be interfered with by this court. However, the learned counsel appearing for the respondent/insurance company, has fairly stated that, without treating this as precedent, the disability may be increased to 40% instead of 38% as awarded by the Commissioner. This cannot be treated as a precedent. Taking note of the submission of the learned counsel for the respondent/insurance company, the loss of earning capacity is fixed at 40% and the difference amount between 40% and 38% shall be paid directly to the injured within a period of four weeks from the date of receipt of the order. This amount will not carry any interest as the award of compensation is now only being modified and increased.

5. With the above observations, the civil miscellaneous appeal is dismissed. However, there shall be no order as to cost.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

Asr

To
The Commissioner, Employees Compensation and Joint Commissioner
of Labour, Salem.

+1 cc to Mrs.Elveera Ravindran Advocate sr4699
+1 cc to Mr.C.Thangaraju Advocate sr4835

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