

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.2757 of 2017

Mr.L.Raja

...Applicant/Appellant

-vs-

1.Mr.V.Krishnamoorthy

2.M/s.The New India Insurance Co. Ltd.,

No.45, Moore Street, Chennai-1.

...Opposite Parties/Respondents

PRAYER: Appeal is filed under Section 30 of Workmen Compensation Act, 1923 to set aside the order dated 10.08.2016 made in W.C.No.559 of 2013 on the file of the Deputy Commissioner of Labour-II) Chennai-600 006 and thus render justice.

For Appellant : M/s.M.Malar

For R2 : Mr.J.Chandran

For R1 : Set Exparte

J U D G M E N T

This Appeal has been filed to set aside the order of the Deputy Commissioner of Labour-II, Chennai dated 10.08.2016 made in W.C.No.559 of 2013, by which the insurance company was directed to deposit a sum of Rs.3,94,626/- within 30 days in the name of the Deputy Commissioner of Labour-II, Chennai, failing which, the amount is payable with interest @ 12% p.a. from the date of accident till the date of deposit, .

Facts in brief:

2. The claimant / appellant herein was employed by the 1st respondent herein as a Driver to drive his TATA Safari Car bearing Regn.No.TN-20-BZ-6789 and the claimant was paid a salary of Rs.12000/- per month. On 25.09.2013 at about 11.00pm, the claimant had met with an accident on account of sudden crossing of a cow on the road at Palaiyanur, Tiruvallur District and sustained severe injuries and he was immediately taken to Arakkonam Government Hospital for treatment and thereafter, shifted to Meenakshi Medical College Hospital, Kancheepuram. A

case in Crime No.240 of 2013 had also been registered by the D-2, Thiruvallangadu Police Station. Since the said Car was insured with the 2nd respondent herein, the claimant had filed a petition before the Authority under the Workmen Compensation Act, 1923, Chennai seeking compensation from the respondents.

3. The Authority, on appreciation of oral and documentary evidence, had fixed the salary as Rs.7699/- and directed the 2nd respondent to pay the amount as stated supra and there was none represented on behalf of the 1st respondent and therefore, he was set exparte. Challenging the fixation of salary as Rs.7699/- instead of Rs.8000/-, the appellant / claimant is before this Court.

4. The only point urged by the learned counsel for the Appellant / Claimant is that the authority, having concluded that a minimum wage of Rs.8000/- has to be taken into account for arriving at a compensation, wrongly fixed the income of the injured as Rs.7699/- per month, which is highly unsustainable. The authority had also erred in drawing the earning capacity of the injured as 40% in lieu of 100%, ignoring the fact the injured cannot do the work of a driver any more on account of multiple grievous injuries sustained by him. Therefore, it was prayed that the compensation granted by the Authority, Chennai on the basis of the income of the injured as Rs.7699/- is arbitrary in nature and the order of the Deputy Commissioner of Labour-II, Chennai is liable to be set aside by this Court on that ground.

5. Per contra, learned counsel for the 2nd respondent has contended that the order of the Deputy Commissioner of Labour-II, Chennai is purely on the basis of the material documents placed before it and there is no functional disability of 100% as contended by the appellant. Therefore, the order of the Labour Authority does not warrant any interference by this Court and the present appeal is to be dismissed in limine.

6. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent / insurance company.

7. It is seen that admittedly, there was an employer and employee relationship between the appellant and the 1st respondent and that the accident had occurred out of and in the course of employment. A glance at the Disability Certificate Ex.P8 discloses the fact that the Doctor, who had examined the injured, ascertained the disability at 45% and the authority had reduced it to 40%. The contention raised by the appellant that the compensation will have to be calculated by taking into account the income of the injured as Rs.8000/- in the light of the Notification of the Government, cannot be accepted,

especially when the Doctor himself had clearly fixed the disability of the claimant at 45%. Moreover, merely because the Notification denotes the minimum wage limit as Rs.8,000/- it does not mean that the wages drawn by the employee / workman, which is less than Rs.8,000/- should be automatically increased to Rs.8,000/- and in that case, the provisions of Section 4(1-B) of the Employees' Compensation Act, 1923 would be defeated. If this is allowed, the appellant will come up with the next plea that in view of the recent Notification dated 03.01.2020, his monthly wages should be fixed at Rs.15,000/-, which is not the real intention of the legislature. Thus, taking note of the injury suffered by the claimant and based on the evidence of the Doctor, the Authority had rightly granted the compensation by fixing the income at Rs.7,699/- and arrived at a compensation, by reducing the percentage of disability from 45% to 40%.

8. At this juncture, the learned counsel for the 2nd respondent / insurance company has stated that the insurance company has no objection to pay compensation by taking into account the loss of earning capacity at 45% as originally fixed by the Doctor.

9. In view of the above submission, the loss of earning capacity, which was assessed by the Doctor as 45% and reduced by the authority as 40%, is hereby enhanced to 45% and the insurance company shall deposit the balance amount towards compensation in respect of enhancement of the loss of earning capacity from 40% to 45% within a period of 45 days from the date of receipt of a copy of this order. In case of failure to deposit the balance amount, it shall carry interest @ 12% payable from the date of accident till the date of deposit. It is directed that the amount lying in deposit shall be released by the authority to the employee / appellant / claimant forthwith without waiting for the difference amount to be deposited by the insurance company.

10. With the above observation and direction, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

The Deputy Commissioner of Labour-II,
Chennai-6.

+1cc to Mr.J.Chandran, Advocate, S.R.No.15636

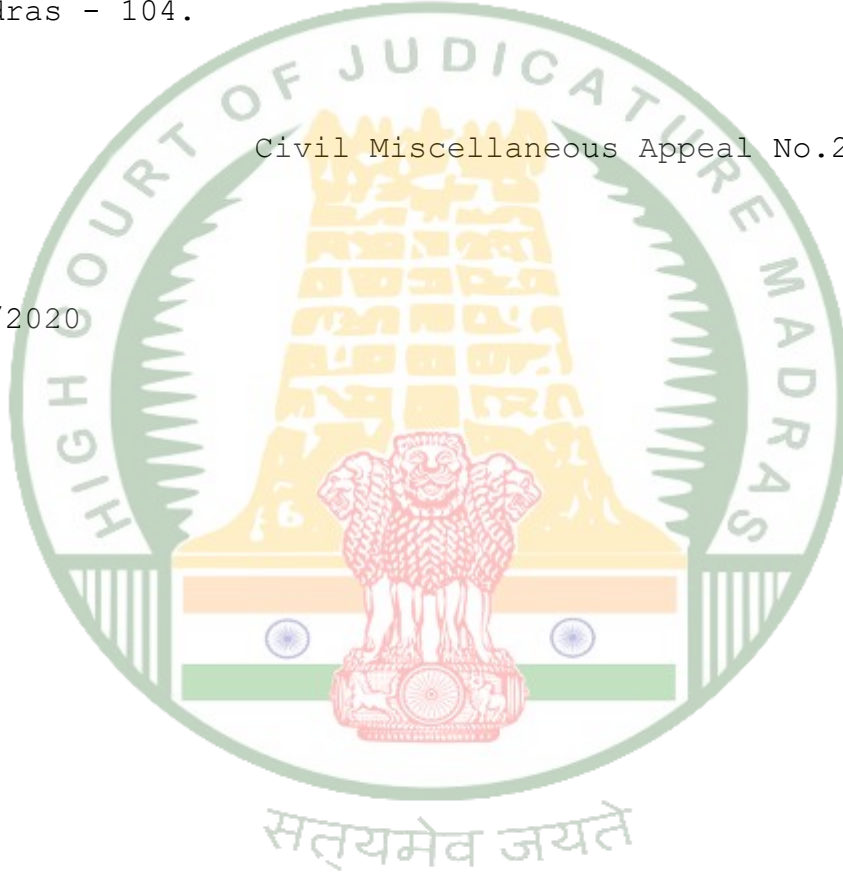
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