

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.10.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.501 of 2017

Babu

.. Appellant/Appellant

Vs

1.M/s.SRM Engineering Construction Corporation Ltd.,
Irunganallur Village,
Mannachanallur Taluk,
Thiruchirapalli-621 005.

(R1 remained exparte before the Forum hence
his presence may be dispensed with)

2.United India Insurance Co. Ltd.,
A5 & 6,2nd Floor,
Appasamy Towers,
27, Sri Thiagaraya Road,
Next to Nagesh Theatre (Old),
T.Nagar.

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the
Workmen's Compensation Act against the Award dated 15.04.2015
made in W.C. No.226 of 2011 on the file of the Deputy
Commissioner of Labour-I, Chennai and the award was received on
06.05.2015 through post.

For Appellant : Mrs.A.Subadra

R1 : Exparte

R2 : No appearance

J U D G M E N T

The appellant claimant has filed the present Civil
Miscellaneous Appeal, challenging the correctness of the
impugned award dated 15.04.2015 passed by the Deputy
Commissioner of Labour-I, Chennai in W.C. No.226 of 2011.

2.Learned counsel appearing for the appellant would submit
that the appellant claimant, who was a Mason, employed by the
1st opposite party at monthly salary of Rs.9,000/-. While so, on
27.04.2011 at about 4 p.m., when the appellant claimant was

involved in constructing sunshade flooring for Institute Lecturer Hall at a height of 20 feet from the ground, fell down from the sunshade flooring and sustained grievous injuries. Immediately, he was rushed to Chennai Medical College Hospital and Research Centre, Trichy, where he took treatment as inpatient from 27.04.2011 to 07.09.2011. Learned counsel appearing for the appellant would further submit that the 1st opposite party has duly insured with the 2nd opposite party vide policy No.012601/41/10/01/00000489 which was valid from 09.03.2011 to 08.03.2012 and the same has also been covering the date of accident. Therefore, the appellant claimant made a claim before the Deputy Commissioner of Labour-I, Chennai claiming compensation of Rs.6,00,000/- along with interest at the rate of 15% per annum after 30 days from the date of accident. Learned counsel appearing for the appellant would further submit that the appellant was 42 years at the time of accident and he earned Rs.9,000/- per month and the same was also accepted by the 1st opposite party. Learned counsel appearing for the appellant further submitted that Dr.N.Saichandran, who was a Doctor, examined as P.W.2, after examining the grievous injuries sustained by the appellant claimant, has given disability certificate certifying 85% permanent disability and he has also appeared before the Deputy commissioner of Labour and explained that the appellant sustained injury on the back of his spine lower region, causing fracture of the d12 vertebrae, causing compression and injury to the nerve of the both lower limbs and causing paraplegia of the both lower limbs and that he was conservatively treated and during the course of treatment, paraplegia recovered to paraparsis and the muscle power was zero at the time of injury in the both lower limbs and that he was recovered from treatment to 3 + due to un-stability in walking and he walks with the help of walker and needs help for active mobility and he was unable to do any standing work.

3.Learned counsel appearing for the appellant would further submit that the learned Deputy Commissioner, without considering the fact that the appellant has sustained grievous injuries in both the lower limbs and he could not walk without the help of walker and due to the same, he could not continue his avocation, has fixed only 80% permanent disability for calculating the compensation though the above said doctor has given disability certificate certifying 85% permanent disability and it is an admitted fact that the appellant, being a Mason, having 85%, cannot do any other work and cannot climb from one floor to another floor on the construction site. Due to the fixation of 80% permanent disability, the compensation has been reduced.

4.Secondly, when it is the case of the appellant that he was employed as a Mason at a monthly income of Rs.9,000/-, as per notification/policy fixing minimum limit at Rs.8000/-, the Deputy Commissioner has reduced the monthly income to Rs.8000/-.

Due to the same, the compensation has been reduced. Therefore, the same needs interference.

5.Although repeatedly the matter was adjourned, there is no appearance on behalf of the respondents, which shows that they are not interested in prosecuting the case and therefore, this Court is of the view that no prejudice would be caused to the respondents in disposing of this matter.

6.It is seen from records that Dr.N.Saichandran, who was examined as P.W.2 before the Deputy Commissioner, Labour, has opined as under:

‘மேலும் மனுதாரர் தரப்பில் மருத்துவர் திரு.என்.சாய்சந்திரன் தனது பிரமாண வாக்குமூலத்தில், Sustained injury on the back of his spine lower region causing fracture of the d12 vertebrae, causing compression and injury to the nerve of the both lower limbs and causing paraplegia of the both lower limbs and he was conservatively treated and during the course of treatment, paraplegia recovered to paraparesis, the muscle power which was zero at the time of injury in the both lower limbs and he was recovered from treatment to 3 + due to un-stability in walking and he walks with the help of walker and needs help for active mobility and he was unable to do any standing work என்றும் தெரிவித்து மனுதாரருக்கு பகுதி நிரந்தரம் என 85% இயலாமை கணித்துள்ளதாகத் தெரிவித்துள்ளார்.

7.A perusal of the claim petition would show that the appellant, while serving as a Mason on 27.04.2011, fell down from the sunshade flooring, which was at a height of 20 feet from the ground floor and as a result, he sustained grievous injuries. Immediately, he was rushed to Chennai Medical College Hospital and Research Centre, Trichy, where he took treatment as inpatient from 27.04.2011 to 07.09.2011 and at the time of accident, the appellant was aged about 42 years. As the first respondent has insured with the second respondent United India Insurance Company in favour of 10 Masons and the same was valid from 09.03.2011 to 08.03.2012, this Court could see that the insurance policy has been covering the date of accident. The evidence deposed by the Doctor stating that the appellant sustained grievous injuries on his spinal cord and as a result he was not even able to walk and he needs help and he was not able to do any standing work, would show that the appellant, being a Mason, cannot climb from one floor to another floor while carrying on his construction activities and even if he walks or climbs with any walker or stick, no contractor will employ him due to his difficulty even in standing and climbing. Therefore, since the appellant would be losing his income due to the said accident, in my opinion, the permanent disability would be fixed at 100% and the same is fixed at 100% accordingly.

8. With regard to fixation of loss of earning capacity, the Deputy Commissioner has fixed Rs.8,000/- as minimum monthly wage of the appellant. This Court, is not inclined to modify the same. Accordingly, the compensation is worked out at $60/100 \times 8000 \times 178.49 \times 100/1000$ which comes to Rs.8,56,752/-.

9. With regard to fixation of interest at the rate of 12%, it is relevant to extract Section 4-A (3)(a) of the Workmen's Compensation Act, 1923 as under:

'direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve percent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due;'

10. While fixing the interest at the rate of 12% per annum, as per Section 4-A (3)(a) of the Workmen's Compensation Act, 1923, the interest for compensation would accrue 30 days after the date of accident. In this regard, it is pertinent to extract the relevant portion of the judgment dated 03.11.2010 passed in CMA Nos.35 and 128/2014 (A.Ramanathan and T.Palanivel Vs. Mr.Gandhi, Proprietor, AGT Traders, T.S.Ravikumar, The Oriental Insurance Company Limited, Esplanade, Chennai and ICICI Lombard General Insurance Limited, Chennai-34) here under :

"20. The Hon'ble Supreme Court of India in the decision reported in Pratap Narain Singh Deo's case , 1976 (1) SCC 829 (Four Judges Bench), has specifically formulated an issue and held that "The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated 6.5.1969 under Section 19."

21. In Ved Prakash Garg v. Premi Devi and others, 1998 ACJ 1 (SC) (Two Judges Bench) the attention of the Hon'ble Supreme Court of India was not drawn to the Pratap Narain Singh Deo's case. However, the Hon'ble Supreme Court of India on the facts of the said case, held that "the Respondent-Insurance Company will be liable to pay the compensation with interest at 6% per annum thereon from the date of the accident till the date of payment to the claimants".

22. In a subsequent decision reported in 2000 ACJ page 5 (Three Judges Bench) (cited supra), the Hon'ble Supreme Court of India, has taken into consideration Pratap Narain Singh Deo's case and also the Judgment of the Full Bench of the Kerala High Court reported in United India Insurance Co. Ltd., v. Alavi 1998

ACJ 1048, and approved the view taken by the Kerala High Court and held that "the amount of compensation under Workmen's Compensation Act is payable on the date of accident and not the amount of compensation payable on account of the amendment made in 1995, which is relevant".

23. It is pertinent to point out at this juncture that the attention of the Hon'ble Supreme Court of India was not drawn to Pratap Narain Singh Deo's case and Kerala Electricity Board's case (cited supra) while rendering its verdict in the decisions reported in National Insurance Co.Ltd. v. Mubasir Ahmed and another, 2007 (1) TN MAC 214 : 2007 ACJ 845 and Kamala Chaturvedi v. National Insurance Co. & others, and in 2009 (1) TAC page 1. In the above said two decisions it has been held that "unless adjudication is done, the question of compensation becoming due does not arise and therefore, it cannot be the date of accident and it has to be taken to be the date of adjudication of the claim".

24. It is a settled position of law and as held by the Hon'ble Supreme Court of India in decisions reported in Union of India v. K.S.Subramanian, 1977 (1) LLJ 5 (SC) and State of Uttar Pradesh v. Ram Chandra, 1977 (1) LLJ 200, that "the proper course for a High Court is to try to find out and follow the opinions expressed by Larger Benches of the Supreme Court in preference to those expressed by smaller Benches of the Court".

25. By applying the above ratio, we are of the considered opinion that the attention of the Hon'ble Supreme Court of India was not drawn to the Larger Bench decisions reported in Pratap Narain Singh Deo v. Srinivas Sabata and another, 1976 (1) SCC 289 and Kerala State Electricity Board v. Valsala K., 2000 ACJ 5 (SC) while deciding the cases reported in 2000 ACJ 845 and Kamala Chaturvedi v. National Insurance Co. and others, 2009 (1) TAC 1.

26. The learned Judge of this Court in the decision reported in Marimuthal @ Marimuthu and another v. R.P.P.Construction (P) Ltd., Chennai and others, 2007 (2) TN MAC 98 : 2007 (5) MLJ 1059 and A.Chairmen v. A.Thirumeni & another, 2008 (1) TN MAC 38, after taking into consideration the above cited Larger Bench decision of the Hon'ble Supreme Court of India, has correctly held that "the interest on compensation is payable 30 days after the date of the accident in which workman sustained injuries resulting in death".

27. In the result, the reference is answered as follows:-

i. The word "falls due" occurring under Section 4-A of the Workmen's Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench decision of the Hon'ble Supreme Court

of India reported in Pratap Narain Singh Deo v. Srinivas Sabata and another, 1976 (1) SCC 289 and Kerala State Electricity Board vs. Valsala.K, 2000 ACJ 5 (SC), means that interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/ orders passed by the Commissioner for Workmen-s Compensation.

(emphasis supplied)

ii. The decisions rendered by the Single Bench of this Court in the decisions reported in Marimuthammal @ Marimuthu and Another v. R.P.P.Construction (P) Ltd., Chennai and others, 2007 (2) TN MAC 98 : 2007 (5) MLJ 1059; A.Chairmen v. A.Thirumeni & another, 2008 (1) TN MAC page 38 had laid down the correct proposition in consonance with the ratio laid down by the Larger Bench of the Hon'ble Supreme Court of India in the above cited decisions."

11.In the light of the well settled legal position, this Court hereby directs the second respondent Insurance Company to deposit the interest at the rate of 12% per annum on the compensation awarded to the claimant after thirty days from the date of accident till the date of deposit to the credit of the W.C. No.226 of 2011 on the file of the 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 being made, it is open to the claimant to withdraw the entire amount with accrued interest by moving appropriate application. With the above direction, the appeal stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga

To

1.The Deputy Commissioner of Labour-I, Chennai.

Copy To:

The Section Officer, V.R.Section,
High Court, Madras.

+1cc to M/s M.Mala Advocate Sr.35106

C.M.A. No.501 of 2017

SSI (CO)
RVR 19/12/2020