



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 14.10.2020

CORAM

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THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.75 of 2008

and

M.P(MD)No.1 of 2008

The Divisional Manager,
M/s New India Assurance Co., Ltd.,
242, Kamarajar Salai,
Madurai.

.. Appellant/2nd Respondent

vs.

1.M.Kaviraj @ Kavirajan

... 1st Respondent/Petitioner

2.P.Gnanasekar

...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act against the award dated 10.10.2007 and made in W.C.No.215 of 2006 on the file of the Workmen Compensation Commissioner and Deputy Commissioner of Labour, Madurai.

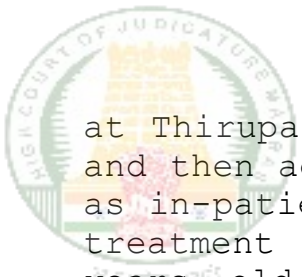
For Appellant : Mr.N.Dilipkumar

For Respondents : R-1 Expired
R-2 No such addressee

J U D G M E N T

Challenging the award passed by the Workmen Compensation Commissioner and Deputy Commissioner of Labour, Madurai, in W.C.No.215 of 2006 dated 10.10.2007, the Insurance Company has filed this appeal.

2.Brief facts of the case are that the claimant/M.Kaviraj @ Kavirajan was a workman employed by the second respondent as a Driver in his Van bearing Reg.No.TN-58-M-6582. On 06.05.2006, when the claimant was driving the above said van in a moderate speed in Keelachivalpatti to Thirupathur main road near A.V.Valliammai Kirashar, the van went off the road and dashed against the Tamarind tree and thereby, the claimant sustained multiple grievous injuries such as fracture on his right leg, left leg and contusion on his forehead. Immediately, he was admitted



at Thirupathur Government Hospital and discharged on the same day and then admitted in Preethi Hospital, Madurai and taken treatment as in-patient from 06.05.2006 to 11.05.2006. Thereafter, he took treatment as out-patient. At the time of accident, he was 30 years old and was drawing Rs.2000/- per month as wages and Rs.100/- per day as batta. The applicant sustained injuries in an accident that arose out of and in the course of employment under the second respondent herein. The second respondent herein has duly insured the said van with the appellant Insurance Company. Hence, the claimant laid a petition, claiming compensation of Rs.4,99,152/-.

3.Resisting the claim, the appellant Insurance Company filed their counter disputing the manner of accident, relationship of employer and employee and its liability to pay the compensation.

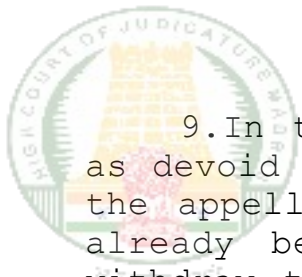
4.To substantiate the case, on the side of the claimant P.W.1 and P.W.2 were examined and Ex.A1 to Ex.A7 were marked. No witness was examined and no documents were marked on the side of the appellant/Insurance Company.

5.After considering the oral and documentary evidence, the Deputy Commissioner of Labour held that the claimant sustained injuries during the course of employment and awarded compensation of Rs.1,50,638/- along with interest at the rate of 12% p.a. Challenging the award, the appellant Insurance Company has filed the present appeal.

6.Heard the learned counsels and perused the materials available on record.

7. In the instant case, the first respondent herein is said to have worked as driver of a van belonging to the 2nd respondent herein and he sustained injuries in the course of employment on 06.05.2006. P.W.2-Dr.J.Mohandoss Gandhi, who assessed the disability of the claimant deposed before the Tribunal that he suffered 36%. The disability certificate was marked as Ex.A.6. However, the Commissioner of Labour had taken the loss of earning capacity at 30% and the wage at Rs.4,000/- per month.

8.A Perusal of the impugned order would show that the Deputy Commissioner, after carefully considering the medical records and the evidence of the doctor, awarded Rs.1,50,638/- along with interest at the rate of 12% per annum to the claimant as compensation. Though the learned counsel for the appellant/Insurance company has contended that the award is on the higher side and it requires reduction, this Court is of the view that the Deputy Commissioner has awarded a just and reasonable



9.In that view, the Civil Miscellaneous Appeal is dismissed, as devoid of merits. It is represented by the learned counsel for the appellant/Insurance Company that the entire award amount has already been deposited. Hence, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

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/ /2021

Sub Assistant Registrar(CS)

To

The Workmen Compensation Commissioner and
Deputy Commissioner of Labour, Madurai.

Copy To:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1cc to Mr.N.Dilipkumar, Advocate in SR.No.20190

JUDGMENT MADE IN

C.M.A(MD)No.75 of 2008

and

M.P(MD)No.1 of 2008

14.10.2020

skn

AE/ (18/01/2021) 3P / 5C