

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:09.02.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.3567 of 2010

K.Bhaskaran

.. Appellant/Petitioner

Vs.

1.M/s.Pepsi Cola India Marketing Company,
No.90, Wellington Plaza, III Floor,
Anna Salai, Chennai - 2.

2.The National Insurance Company Limited,
No.66, Greams Road,
Chennai.

3.M/s.Sakthi Agencies,
No.52, Kopparasa Nalur, Kumanan Chavadi,
Ponnamallee High Road,
Chennai - 56.

4.Kottiswaran .. Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, against the award made in W.C.No.30 of 1999, dated 06.11.2000, on the file of the Commissioner for Workmen's Compensation - II, Chennai.

For Appellants : Mr.Anand and Surya

For Respondents : No Appearance for R1
Mr.D.Bhaskaran for R2
R3-left
R4-no such person

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J U D G M E N T

The appellants herein is the petitioner in W.C.No.30 of 1999, filed this petition claiming compensation for the injury sustained by him. On 16.09.1997, he met with an accident, while driving the Mini lorry bearing registration No.TN-07Y-784, belonging to the first respondent at G.N.T.Road. Due to the

accident, the applicant sustained Grade - II compound fracture in the right leg and left lower leg internally rotated and he sustained multiple injuries all over the body. He took treatment in a private hospital as inpatient for nearly three months and the Doctor certifies 60% as permanent disability. Thereby, he was not able to work as he was doing before. The Doctor assessed his disability at 100%. Even though, he examined the Doctor before the Commissioner of Labour, he fixed only 75% disability and awarded compensation erroneously. So he prayed to award compensation by fixing the disability at 100%.

2. Point for consideration:

Whether the loss of earning capacity suffered by appellant is 100%.

3. At the time of the argument, the learned counsel for the appellant submits that if the injured proved his disability through medical evidence, the Commissioner of Labour has no power to reduce the loss of disability without any valid reasons.

4. The learned counsel for the appellant placed reliance on the judgment of the Hon'ble Supreme Court reported in 2012(2) TNMAC page 750 in the case of Oriental Insurance Company Limited, Chennai - 108 Vs. R.Mahalingam.

"Workmen's compensation Act, 1923 (8 of 1923), Section 2(1) (1), Schedule I, part II - "Total disablement" - definition of - scope of - disability which totally incapacitates workman for all works which he was capable of performing before accident, can be treated as total disablement - injured workman, a driver suffered fracture injury on left femur - Malunion of fractured bones causing shortening of leg by 1 1/2 inches - Hip flexion to extent of 80 degrees and knee flexion to extent of 60 degrees - injured cannot walking stick and also limping - disability assessed by Doctor at 60% - Injured not capable of discharging his duties as a driver - Commissioner fixing disability at 60%, if proper, when loss of earning capacity is 100% as injured rendered unfit for work of a driver - mere fact that injury included in Part II of Schedule I cannot ipso facto lead to conclusion that no total disablement resulted at all - merely because a person may be able to perform certain other works, it cannot be assumed that a driver, who has been disabled to do driving

can perhaps do some other work for which he has no competence or experience - definition of "total disablement" does not speak of capacity to work, but incapacity to work. Incapacity to which section 2(1)(I) refers is not physical incapacity but incapacity to secure employment due to injury which caused disablement - claimant's left leg become totally unfit for use for driving a vehicle - disability though assessed at 60%, loss of earning capacity is total and permanent - in absence of any evidence to effect that claimant has been employed in alternative employment it can be concluded that loss of earning capacity is 100% - loss of earning capacity.

a. Section 2(1)(I) of the workmen's Compensation Act, defines 'total disablement' as such disablement, whether temporary or permanent nature as incapacities a workman for all work which he was capable of performing at the time of accident resulting in such disablement. Therefore, even if a workman suffers physical disablement itself totally incapacities the workman from doing any work which he was capable of performing before the accident, it can be treated as total disablement."

5. In the instant case, the injured due to the said accident sustained fracture in the leg along with grievous injuries all over the body. To prove his disablement, he examined the Doctors namely AW.2 and AW.3 (Arthopatic Surgeon) assessed the disability, due to the injury sustained by the appellant in his right leg and right knee as 60% (Exs.A8 and A9). Another Doctor AW.3 certifies internal injury sustained by the appellant in the abdominal region. He certifies 40% as permanent disability (Ex.A.10). The total permanent disability of the appellant comes to 100%.

6. Admittedly, he was a driver at the time of accident. The evidence of Doctor proves that he would not be able to do the same job of driver as he did before.

7. There is no evidence on the side of the respondent that he is employed with alternative employment and others, the appellant is able to prove his loss of earning due to said permanent disability around 100%. But, without considering this aspect, in the trial Court, while awarding the compensation fixed the disability only at 75% without any reason. So, the

objection raised by the appellant is sustainable one. So the disability of the applicant is fixed at 100%.

8. The appellant also raised another objection that while fixing the salary, Commissioner of Labour instead of fixing Rs.3,000/- per month, which was prevailing at the time, he fixed only a sum of Rs.2,000/- by applying minimum wages without ignoring the fact that he was paid Rs.100/- per day along with batta Rs.30/-.

9. Accordingly, the wages of the applicant ought to have fixed at Rs.3,000/- per month as notional income prevailing in the year 1989. Accordingly, the award is calculated as follows:
$$100/100 \times 215.8 \times 60 / 100 \times 3,000 / - = 3,88,440 / -.$$

10. In the result, this Civil Miscellaneous Appeal is allowed. The 2nd respondent is directed to deposit the award amount of Rs.3,88,440 as awarded by this Court, together with interest at the rate of 12% per annum, after 30 days from the date of the accident till the date of realization as the award amount. The amount shall be deposited within a period of four weeks from the date of receipt of a copy of the judgement.

11. With regard to other findings, the order passed by the learned Commissioner of Labour-II, Chennai, is confirmed. There is no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner of Workmen's Compensation-II,
Chennai.

+1cc to Mr.Andand, Advocate, SR.No.7150.

C.M.A.No.3567 of 2010
and
M.P.No.1 of 2007

KJ(CO)
CSR 30.04.2021