

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.02.2021
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.1020 of 2016
and
C.M.P.No.7769 of 2016

M/s.United India Assurance
Company Limited,
Motor Third Party Cell,
'Silingi Buildings',
No.134, Greams Road,
Chennai - 600 006

..Appellant

Vs.

1.Thiru.J.Mohammed Ali
2.Thiru.P.Subramani

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, against the Final Award dated 04th November 2015 (received on 10.03.2016) passed by the Learned Deputy Commissioner of Labour-II, Chennai in E.C.No.360 of 2014.

For Appellants : Mr.J.Micheal Visuvasam
For Respondents : R1 - Mr.K.Varadhakamaraj
R2 - Left

J U D G M E N T

The United India Assurance Company Limited is the appellant, filed the miscellaneous appeal, challenging the award dated 04.11.2015 passed in E.C.No.360 of 2014.

2. The sole question of law now raised by the learned counsel for the appellant is that award of 45% of disability for the purpose of ascertaining the loss of future earning is erroneous.

3. Admittedly, the claimant sustained fractures. However, he was aged about 26 years and he got it cured. The claimant is working as an Auto driver and therefore, the fracture sustained in the left leg may not have any implications to continue his job as an Auto driver. However, the fact remains that the claimant sustained fracture in his left leg and suffering from muscle pain. The doctor assessed the disability as 50%. The Deputy Commissioner of Labour accepted 45% of disability.

4. The learned counsel for the appellant made a submission that even for amputation under the schedule to the Act, 50% is fixed. Therefore, fixing of 40% on loss of earning capacity is

exorbitant and 40% would be appropriate.

5. In view of the fact that there is no serious injury causing permanent disability to continue the job of the respondent as an Auto driver, this Court is of an opinion that 40% would be appropriate for calculating the compensation under the head of loss of earning capacity. Accordingly, the loss of earning capacity of 45% fixed by the Deputy Commissioner of Labour stands modified to 40%. Thus, the total compensation payable to the respondent/claimant is Rs.4,19,462/- (Rupees Four Lakh Nineteen Thousand Four Hundred and Sixty Two only).

6. In view of the facts and circumstances, the respondent / claimant is entitled for the modified compensation of Rs.4,19,462/- along with the interest at the rate of 12% per annum from the date of expiry of 30 days from the date of accident.

7. The learned counsel for the appellant says that the award amount had already been deposited. Thus, the revised interest is to be calculated up to the date of deposit. If any excess amount is deposited, then the appellant is permitted to withdraw the same.

8. Accordingly, the award dated 04.11.2015 passed in E.C.No.360 of 2014 stands modified and the Civil Miscellaneous Appeal in C.M.A.No.1020 of 2016 stands allowed in part. No costs. Connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

The Deputy Commissioner of Labour-II,
Chennai.

+1CC to Mr.K.VaradhaKamaraj, Advocate SR No. 5481.

+1CC to Mr.J.Micahel Viswasam, Advocate SR No. 5949.

C.M.A.No.1020 of 2016

BS (CO)

NRA (05/03/2021)