

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2021

CORAM:

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

C.M.A.No.2611 of 2011

K.Manthirammoorthy

.. Appellant

Vs.

1.A.Narayanan

2.United Insurance Company Ltd.,
No.21, Raja Annamalai road,
Purasawakam,
Chennai-600 084.

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, against the order dated 27.10.2010 passed in W.C.No.282 of 2009 by the Deputy Commissioner of Labour-II, (Commissioner for Workmen's Compensation-II), Chennai-6

For Appellant : Mr.U.M.Ravichandiran

For Respondents

For R2 : Mr.M.J.Vijayaraghavan
for S.K.Krishnamurthy

For R1 : No appearance

J U D G M E N T

The appellant herein is the petitioner in W.C.No.252 of 2009 claiming compensation for the injuries sustained by him due to the accident happened on 11.02.2008, while he was served as a driver under the 1st respondent in the tempo-traveller in Reg.No.TN-04-R-8844, due to the accident he sustained "Fracture of Right Femur, Fracture of Both Bone in Right leg severe Head injuries and other Multiple injuries all over the body". Even after a long treatment he has not completely recovered and he was not able to do the driving work as he done before. Hence, the he claimed compensation from the 1st respondent and the Insurance Company to whom the vehicle was insured.

2. Both the respondents contested the case.

3. After full trial, the labour Commissioner awarded compensation by fixing the loss of earning capacity as 65 %. Aggrieved that order the appellant preferred this appeal submitting that the labour commissioner has no locus standi to reduce the disability and failed to fix the loss of earning capacity as 100% without appreciating the medical evidence adduced on his side. He prayed to fix the loss of earning capacity as 100 % and to enhance compensation.

4. The learned counsel for the respondents submitted the objections.

Point for consideration:

(i) whether the labour commissioner was error in holding that the loss of earning capacity is only 65% to the appellant without considering the medical evidence adduced on his side.

5. On perusal of the records, it is seen that, on the side of the appellant, he was examined as R.W.1 and to prove his loss of earning capacity, the Doctor was examined as P.W.2 and the documents Exs.P.1 to Exs.P.11 were marked, and there is no evidence on the side of the respondents, before the Labour Commissioner.

6. It is an admitted fact that the petitioner was employed as driver under the 1st respondent and the accident also admitted, besides the vehicle was insured with the 2nd respondent. The Labour Commissioner rightly held that, the 2nd respondent is liable to pay the compensation. While fixing the compensation based upon the medical evidence, he fixed the loss of earning capacity as 65%. But the learned counsel for the appellant submitted that the appellant sustained grievous injuries more particularly, in his hip, right femur and two fractures in the right leg. In spite of the treatment, the length of the right leg was reduced to 2.5 inches and even after the treatment, the leg was infected, again surgery was conducted, so he was not able to do the work as he done before and the Doctor - P.W.2 certified that partial and permanent disability is totally 70 %. Further, he submitted that the labour commissioner ought to have fixed 100% of loss of earning capacity because he was not able to do the driving work as he done before and he was not availed for any alternative allegation. So he prays to fix the loss of earning capacity as 100%.

7. The learned counsel for the respondents submitted that there was no documentary evidence that he was not able to do the driving work and he can go for another work because he suffered with partial disability.

8. On perusal of the evidence of P.W.2 due to the injuries sustained by the appellant even after the surgery, the right leg is reduced to 2.5 inches and unable to ride freely. As well as, he would not able to walk without support. So he clearly proves that the appellant has not done the driving work as he did before. The labour commissioner ought to have fixed the loss of earning capacity 100 % along with disability of 75% as certified by the Doctor. But the Labour Commissioner reduced to 65% without any reason nor considered the loss of earning capacity. Therefore, loss of earning capacity is fixed 100% and disability is fixed 75% by enhancement.

9. Considering the facts of the case, this Court accordingly fixes the loss of earning capacity as 75%. However, as regard to the finding under other heads of compensation, this Court does not warrant any interference. The Compensation enhance as follows:

$$\frac{60}{100} \times \frac{100}{100} \times \frac{213.57}{100} \times 4000 = 5,12,568/-$$

10. Accordingly, the award is modified. Further, the Labour Commissioner awarded interest only if the 2nd respondent default in deposit of the award but as rightly pointed out by the appellant's counsel the appellant is entitled the interest for the award 30 days from the date of accident till the date of realization, as per Section 4-(A)(2) of the Workmen Compensation Act, the employer is bound to make provisional payment based on the extent of liability, and he accepts the same as per Section 4-(A)(1) of Act, compensation under Section 4 shall be paid as soon as it falls due. A combined reading of said provision makes it clear that an employer is bound to make even provisional payment also as soon as it falls due. The words as soon as means, immediately after the accident, in which the workmen sustains injuries or dies. However in the ratio laid down in 2010(2) TN MAC 80 DB consonance with the ratio laid down by the Larger Bench of 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 v. Valsala, K., 2000 ACJ 5 (SC) held interest on compensation payable after 30 days from the date of accident.

11. As discussed above, it is very clear that the claimant is also entitled to the interest on the amount of compensation after 30 days from the date of accident. Therefore, the appeal is allowed with the modification that the 2nd respondent is directed to pay the award amount a sum of Rs.5,12,568/- with interest at the rate of 12 % p.a., after 30 days from the date of the accident till the date of realization for the award amount to the appellant, within a period of four weeks from the

date of receipt of a copy of the judgment. No Costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

To

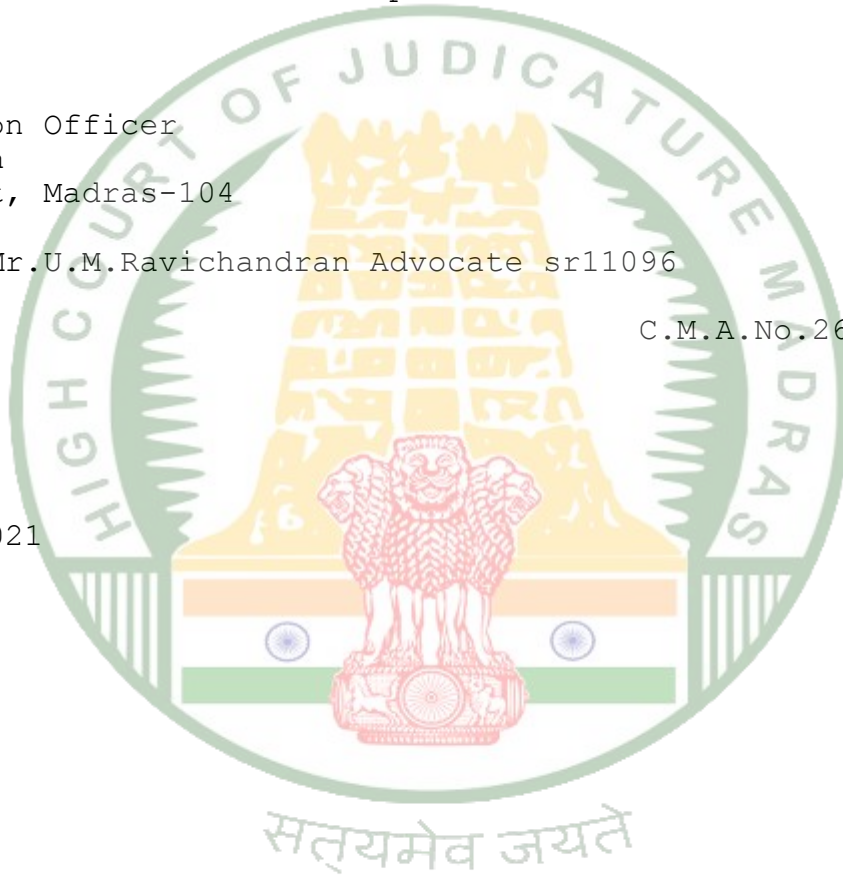
1.The Deputy Commissioner of Labour II
Commissioner for Workmen's Compensation-II)
Chennai

Copy to
The Section Officer
VR Section
High Court, Madras-104

+1 cc to Mr.U.M.Ravichandran Advocate sr11096

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