

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-01-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CMA No.1447 of 2016

A.Subramani

..Appellant/Appellant

vs.

1.Thiru A.Pandurangam

2.The New India Assurance Co. Ltd.,
Motor Third Party Claims Cell,
No.45, Moore Street,
Chennai-600 001.

..Respondents/Opp Parties

PRAYER : Civil Miscellaneous Appeal is preferred under Section 30 of the Workmen Compensation Act, against the Award dated 01.08.2008 made in WC No.484 of 2006 on the file of the Deputy Commissioner of Labour-I, Chennai.

For Appellant : Mr.V.Venkatesan

For Respondent-2 : Mr.J.Michael Visuvasam

J U D G M E N T

The Award dated 01.08.2008 passed by the Deputy Commissioner of Labour-I, Chennai in WC No.484 of 2006, is under challenge in the present Civil Miscellaneous Appeal.

2. The substantial question of law mainly raised in the present Civil Miscellaneous Appeal is that when the employer-employee relationship was proved, the liability was fixed on the employer instead of fixing the liability on the second respondent-Insurance Company.

3. The claimant preferred the present Civil Miscellaneous Appeal questioning the fixation of liability on the employer instead of fixing the liability on the second respondent-Insurance Company as per the policy.

4. The appellant states that he was employed by the first opposite party Mr.Pandurangam as Coolie in a goods vehicle bearing Registration No.TN.20-AZ-5558 on a monthly salary of Rs.4,000/- and Rs.20 per day as batta.

5. On 07.06.2006, the lorry met with an accident and the claimant sustained multiple injuries. He was admitted in KMC Hospital at Chennai and subsequently, taken treatment. A case was registered in Crime No.248/P2/2006.

6. The claim petition was filed by the appellant, seeking compensation.

7. The Deputy Commissioner of Labour adjudicated the issues with reference to the documents and evidences produced by the respective parties.

8. The findings of the Deputy Commissioner of Labour clearly states that the accident was admitted by the parties and the Insurance Company was also in force on the day of occurrence.

9. This apart, it was established that the employer-employee relationship between the claimant and the first respondent was in force.

10. In view of the fact that the parties had agreed that the employer-employee relationship existed on the day of accident and the Insurance Company Policy was also in force, there is no reason to shift the liability on the employer and in fact, the liability is to be fixed on the second respondent-Insurance Company as per the policy.

11. Learned counsel appearing on behalf of the second respondent-Insurance Company, however, contended that based on the Disability Certificate Ex.A-6, the nature of disability was fourth and fifth two toes of the right foot got fractured. Therefore, as per the Schedule in the Statute, the disability percentage is to be fixed as 5% towards loss of income. Even in case of amputation, both the toes, the loss of earning capacity is to be fixed as 5%. Contrarily, in the present case, it is only a fracture and subsequently got cured.

12. This being the factum, fixing 35% towards loss of earning capacity is excessive and in fact 5% is to be fixed towards earning capacity.

13. Learned counsel appearing on behalf of the second respondent-Insurance Company is unable to deny the liability in view of the fact that the policy was in force and further the employer-employee relationship was also established by way of

admission. Under these circumstances, the disability percentage for calculating the loss of earning capacity is reduced from 35% to 5% and accordingly, the total compensation is modified as Rs.24,704/-.

14. Thus, the liability is now fixed on the second respondent-Insurance Company. The second respondent-Insurance Company is directed to deposit the modified compensation amount of Rs.24,704/- along with interest at the rate of 12% per annum from the date of accident till the date of deposit. The second respondent-Insurance Company is directed to deposit the entire modified compensation amount along with the accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit, being made, the appellant-claimant is permitted to withdraw the entire Award amount by filing an appropriate application and payments are to be made through RTGS.

15. In this view of the matter, the Award dated 01.08.2008 passed in W.C. No.484 of 2006 by the Deputy Commissioner of Labour-I, Chennai, stands modified and consequently, Civil Miscellaneous Appeal No.1447 of 2016 stands allowed in part. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

16. The claimant is permitted to withdraw the entire Award amount with accrued interest by filing an appropriate application and payments are to be made through RTGS.

Sd/-

Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

Svn

To

The Deputy Commissioner of Labour-I,
Chennai.

+1cc to Mr.J.Michael Visuvasam, Advocate SR.No.4613

C.M.A.No.1447 of 2016

GP (CO)
KKV/05/03/2021