

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.02.2021

CORAM:

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

C.M.A.No.1778 of 2016

Ravichandran .. Appellant/Applicant
Vs.

1.VGN Homes Pvt. Ltd.
No.333, Poonamallee High Road,
Aminjikarai Main Road, Chennai-29.

2.Babu

3.The National Insurance Co.,Ltd (T.P.Cell)
No.758, Anna Salai,
Chennai-600 002. ... Respondents/Opposite parties

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, praying to set aside the order dated 09.02.2016 passed in W.C.No.220 of 2013 by the Commissioner for Workmen's Compensation -II, Deputy Commissioner for Labour -II, Chennai-6.

For Appellant : Mr.K.A.Balasubramanian

For Respondents :

For R1 & R2: No appearance

For R3 : Mr.D.Bhaskaran

J U D G M E N T

The appellant herein is the petitioner who filed W.C.No.220 of 2013, for the grievous injuries sustained by him all over his body, under the employment with the 1st respondent through the contractor/ 2nd respondent as a carpenter. Due to the accident happened on 23.09.2012, while he was doing carpentry work in the 3rd floor of the VGN homes at Tiruverkadu. He was immediately admitted in the Government hospital for treatment. Though, he was under treatment merely for about 3 months, he has not completely recovered. So he claim compensation from the respondents 1,2 and 3, before the Commissioner of Labour.

2. All the three respondents were contested the case.

3. After full trial, Commissioner for Workmen's Compensation -II, Deputy Commissioner for Labour -II, Chennai, fixed the loss of earning capacity as 65 % and awarded

compensation. But the appellant / petitioner was not satisfied with the award passed by the Commissioner of Labour, on the ground that due to the said accident he lost his total earning capacity as 100 % but without considering the medical evidence, the Commissioner of Labour erroneously fixed 65 % as loss of earning capacity and awarded less compensation. Aggrieved by the order, he preferred this appeal.

4. The respondents also contested the appeal.

5. Point for consideration:

(i) whether the award passed by the Labour Commissioner by fixing the loss of earning capacity is 65 % is sustainable one?

6. Facts of the case reveals that the appellant was working as a carpenter under the 1st respondent engaged through his contractor / 2nd respondent. In the construction place on 23.09.2012, while he was doing a carpentry work, the wastage material like tiles, sand bags were turn out from the 3rd floor by some other labours, it has fallen on the shoulder of the appellant and thereby sustained grievous injuries all over the body and fractures on his spinal cord. Immediately, he was admitted in the Government hospital and nearly about 3 months he was taking treatment and he has also underwent surgery. Inspite of that, he was not able to walk. The Doctor also certified that due to the fracture sustained in the spinal cord 90 % of disability and he was permanently disabled to do his work as he did before. Hence, his loss of earning capacity is considered as 100 % disability. But without considering this aspect, the Labour Commissioner fixed 65 %, which is an unsustainable one. So he prayed to fix the loss of earning capacity to 100 % and to award the compensation accordingly.

7. To support his case, the appellant / petitioner relied on the documents which were marked as Exs.P.1 to Ex.P.11 and he was examined as P.W.1 and the Doctors were examined as P.W.2 and P.W.3 and on the side of the respondents, one Arulmozhi was examined as R.W.1, before the Labour Commissioner.

8. The counsel for the 3rd respondent submitted that there was no employer and employee relationship between the 1st respondent and the insurer and there was no policy coverage at the time of the accident, hence he is not liable to pay the compensation as directed by the Labour Commissioner. So he prayed to dismiss the appeal.

9. On perusal of the evidence, witnesses were examined on the side of the respondents/ insurance Company as R.W.1 and admits that for carpenter also, there was a policy coverage taken by the 1st respondent/VGM Homes Pvt. Ltd., Admittedly the 2nd respondent is a contractor who engaged carpenter and labours to the 1st respondent's Company for its construction project and this fact also not been denied by the 1st respondent. Hence, it is prima facie established that through contractor / the 2nd respondent, the injured was engaged as a carpenter under the 1st respondent for its construction project. So the employer and employee relationship between himself and the 1st respondent was proved. Besides there was a policy coverage for carpenter. Hence the Labour Commissioner in his order, has rightly awarded the compensation and directed the 3rd respondent to pay the award amount with interest through the 1st respondent by the insurance Company.

10. According to the appellant, the Doctor in his certificate has certified 90% as his loss of disability, owing to injuries sustained in the accident. It is admitted fact that while he was doing construction project waste tiles and sand bags were thrown on him accidentally from the 3rd floor and he sustained grievous injuries, for which he had underwent treatment nearly for about two months in the Government Hospital. Even after discharge from the hospital, he has not able to move his hands, legs and neck due to the injuries sustained in that accident.

11. Accordingly, the Doctor certified totally 90 % as his disability the nature of the injuries sustained by him reveals that he was not able to do the carpentry work as he did before. So, the loss of earning capacity ought to have been fixed at 100%, but without considering this aspect the Trial Court erroneously fixed 65 %, which is an unsustainable one.

12. Considering the facts of the case, this Court accordingly fixes the loss of earning capacity as 100%. However, as regard to the finding under other heads of compensation this Court does not warrant any interference. The Compensation enhance as follows:

$$\frac{60}{100} \times \frac{100}{100} \times 189.56 \times 8000 = 9,09,888/-$$

13. In the result, this Civil Miscellaneous Appeal is allowed and the 3rd respondents is directed to deposit the award amount of Rs.9,09,888/- as awarded by this Court, together with interest at the rate of 12 % per annum after 30 days from the date of accident till the date of realisation, within a period

of four weeks from the date of receipt of a copy of the judgment. No Costs.

Sd/-
Assistant Registrar (CS VIII)

/TRUE COPY/

Sub-Assistant Registrar

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TO

1.The Commissioner for Workmen's Compensation - II,
(Deputy Commissioner for Labour-II)
Chennai-6.

2.The Section officer,
VR Section,
High Court, Madras=104.

C.M.A.No.1778 of 2016

SSD(CO)
KKN 29/04/2021



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