

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.3600 of 2012

C.Santhakumar ... Appellant
Vs.

1.M/s.Sri Sight Marketing Services,
No.17, First Main Road,
Nanganallur, Chennai 61.

2.The Oriental Insurance Co.Ltd.,
Bali Towers, IV - Floor,
No.1, Abdul Raszak Street,
Saidapet, Chennai 15.

3.The Oriental Insurance Co.Ltd.,
Motor Third Party Cell,
No.Esplanade Road,
Chennai-108.

..Respondents

(R1-Set exparte in Lower Court)

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the judgment and decree made in W.C. Case No.72 of 2002 dated 12.08.2003 on the file of the Commissioner for Workmen Compensation - II at Chennai.

For Appellant : Mr.K.R.Ponnusamy for
M/s.Anand and Suryas

For Respondents : R1 - Exparte
Mr.P.Kandasamy for RR2 & 3

J U D G M E N T

The order dated 12.08.2003 passed in W.C.No.72 of 2002, is under challenge in the present civil miscellaneous appeal.

2. The claimant filed an appeal seeking enhancement of compensation. The appellant filed an application under Workmen Compensation Act seeking compensation on the ground that he was working under the first respondent as Autorickshaw driver and salesman for about three years. He states that he was drawing a salary of Rs.3000/- per month and Rs.50/- per day as batta. On 05.09.2000, at

about 17.30 hours, the appellant driving the autorickshaw bearing Registration No.TN.22 H.0958, met with an accident and sustained grievous injuries. The appellant took treatment and thereafter, filed an application seeking compensation.

3. The Deputy Commissioner of Labour adjudicated the issues based on the documents and evidences produced by the respective parties and awarded compensation of Rs.95,937/- along with an interest at the rate of 12% per annum.

4. The learned counsel for the appellant mainly contended that the appellant sustained grievous injuries and therefore, fixation of 40% towards loss of earning capacity is erroneous. This apart, the appellant is drawing a monthly salary of Rs.3000/- and Rs.50/- per day as batta. Therefore, the monthly income fixed as Rs.1922/- by the Deputy Commissioner of Labour is also erroneous, which is lower than that of the actual salary drawn by the appellant.

5. This Court is of the considered opinion that in the absence of any evidence to establish the correct salary of the claimant, the Deputy Commissioner of Labour is correct in adopting the minimum wages fixed by the Government in its notification. The monthly income can be fixed based on the actual salary, provided there is an acceptable evidence for receiving such salary. In the present case, the appellant could not able to produce any such evidence or acceptable document, proving his salary during the relevant point of time when he met with an accident. In the absence of any such proof, the Deputy Commissioner of Labour is right in adopting the minimum wages notified by the Government.

6. Thus, this Court do not find any infirmity or perversity as such in respect of quantum of compensation awarded. Therefore, the grounds raised in the present appeal deserves no merit consideration. However, the interest of 12% is to be granted from the date of expiry of 30 days from the date of the accident. Accordingly, the award amount of Rs.95,937/- stands confirmed and the interest of 12% per annum is to be paid on expiry of 30 days from the date of the accident.

7. With these modifications, the award dated 12.08.2003 passed in W.C.No.72 of 2002, stands confirmed in all other aspects. Consequently, C.M.A.No.3600 of 2012 stands allowed in part. No costs.

8. The Insurance Company is directed to deposit the entire award amount with accrued interest within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same by filing an appropriate application before the competent authority. The payments are to be made through RTGS.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsk

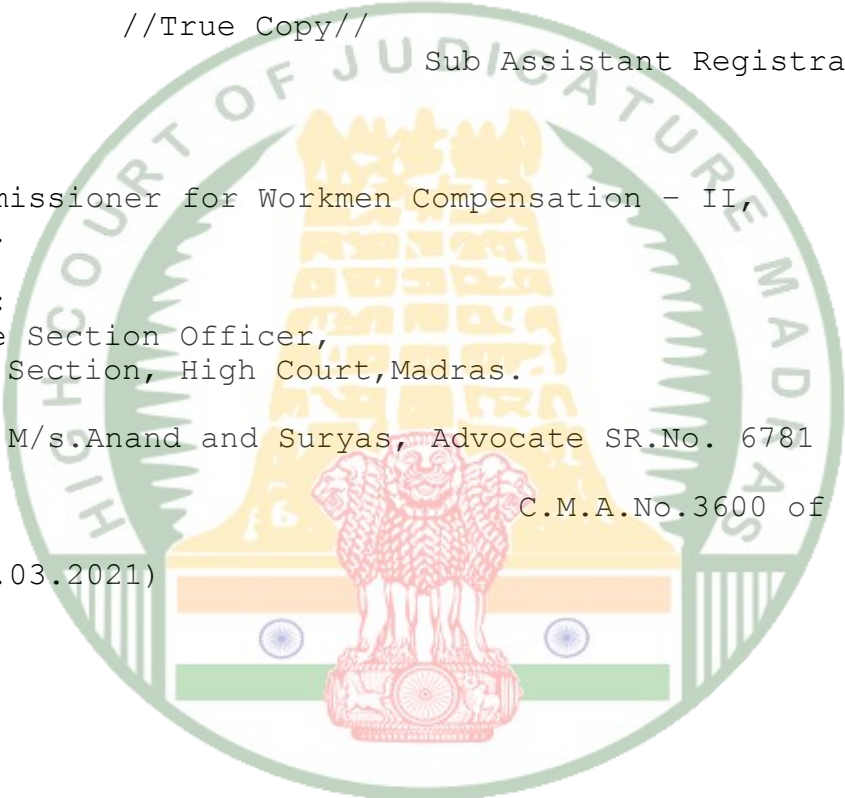
To
The Commissioner for Workmen Compensation - II,
Chennai.

Copy to:
The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.Anand and Suryas, Advocate SR.No. 6781

C.M.A.No.3600 of 2012

A.SK(22.03.2021)



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