

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 06.01.2021

JUDGMENT DELIVERED ON: 07.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NO.3584 OF 2013

Simmasanam

S/o.Surya Narayanan

.. Appellant

Vs.

1. Project Executive,
Valliammal Society & SRM Institute,
Department of Construction,
Chennai-33. (R1 remained exparte before the Forum)

2. United India Insurance Company Ltd.,
A5 & A6, II Floor,
No.27, Appasamy Towers,
Sir Thiagaraya Road,
Near Nagesh Theatre,
T.Nagar, Chennai-600 017. .. Respondents

PRAYER :

Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, pleaded to set aside the award dated 18.04.2009 and made in W.C.No.239 of 2007 on the file of the learned Deputy Commissioner of Labour-I, Chennai.

For Appellant : M/s.M.Malar

For Respondents : Mr.J.Michael Visuvasam
For R2

: R1-Exparte

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J U D G M E N T

Appellant herein is the petitioner who filed W.C.No.P.No.239 of 2007 before the Tribunal / learned Deputy Commissioner of Labour-I, Chennai, claiming compensation from the respondents for the injuries sustained by him due to the accident that had happened in the course of employment under first respondent and

second respondent is the company in which first respondent is the insurer.

2. After full trial, the Tribunal awarded a sum of Rs.3,22,560/-, ordered to deposit within 30 days, in case of default, interest is awarded from the date of petition till the deposit made by second respondent.

3. Aggrieved by that order, the appellant preferred this appeal. First respondent remains ex-parte and second respondent is represented through his counsel.

4. According to the appellant, he worked as mason, under the first respondent and involved in construction work in the project of first respondent. In the course of the work, he fell down and sustained grievous injuries. He has been admitted in the hospital for treatment. Even after the treatment, he was unable to walk and do the work as he did before. Hence, he claimed compensation.

5. To prove the claim, the appellant / petitioner relied on Exs.P1 to P10. Oral evidence was also adduced on the side of the appellant / petitioner. Since first respondent remained ex-parte, the employer and employee relationship between first respondent and the appellant is impliedly admitted one, as per the document Ex.P5 Insurance policy, first respondent is insured with second respondent.

6. Based upon Ex.P.1, discharge summary, the Tribunal / the learned Deputy Commissioner of Labour-I, Chennai concluded that during the course of employment with first respondent, the appellant sustained injuries. At the time of argument, the learned counsel for the appellant submitted that the Tribunal had erroneously fixed the loss of earning capacity only at 60%, but on considering the nature of the injuries sustained by the appellant, the Tribunal ought to have fixed loss of earning capacity at 100 %.

7. But the learned counsel for second respondent strongly objected and submitted that though the appellant sustained injuries, he had not suffered any permanent disability. But the appellant is aggrieved with the fixation of loss of earning capacity at 60% by the Tribunal.

8. As per Ex.P.1, discharge summary, the appellant sustained fractures and also took treatment as an inpatient for 88 days. The Doctor also certified that partial disability is 67%. So the facts reveal that he sustained multiple fracture, but not permanent disability. Admittedly, he was aged about 20 years at the time of accident, due to his younger age, his disability and

the injuries sustained by him, may also get decreased in future. Therefore, the objection made by the appellant with regard to fixation of loss of earning capacity of 100% is unsustainable one. With regard to the other facts, the Tribunal has rightly fixed the salary and awarded him the said compensation.

9. The learned counsel for the appellant raised another objection with regard to the interest awarded. As per the order of the Tribunal, in case of default, the appellant is entitled to claim interest from the date of the petition till the date of realisation. But, as clearly pointed out by the counsel for the appellant, the interest was not awarded from the date of accident which has happened on 09.08.2006.

10. Admittedly, the case was disposed of by the trial Court / learned Deputy Commissioner of Labour-I, Chennai on 18.04.2009 and the appellant is entitled to claim interest from the date of accident till the date of realisation of the amount. However, only on 05.07.2013, after filing of this appeal, the award amount alone was deposited and the same was withdrawn by the appellant. But as discussed above since the amount was not deposited within the stipulated period, the appellant is entitled for the interest amount from the date of accident till the amount was deposited on 05.07.2013.

11. Therefore, the appeal is partially allowed with the modification that the appellant is entitled for the interest for the award amount from the date of accident till the amount was deposited on 05.07.2013 at the rate of 12%. Hence, the Tribunal / learned Deputy Commissioner of Labour-I, Chennai is directed to deposit the interest amount from the date of accident till the realisation of the award amount to the appellant within a period of four weeks from the date of receipt of a copy of the judgment.

12. With regard to other findings, the order passed by the Tribunal is confirmed. Accordingly the appeal is partly allowed. No Costs.

Sd/-
Assistant Registrar (CS VIII)
//True Copy//

Sub Assistant Registrar

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To

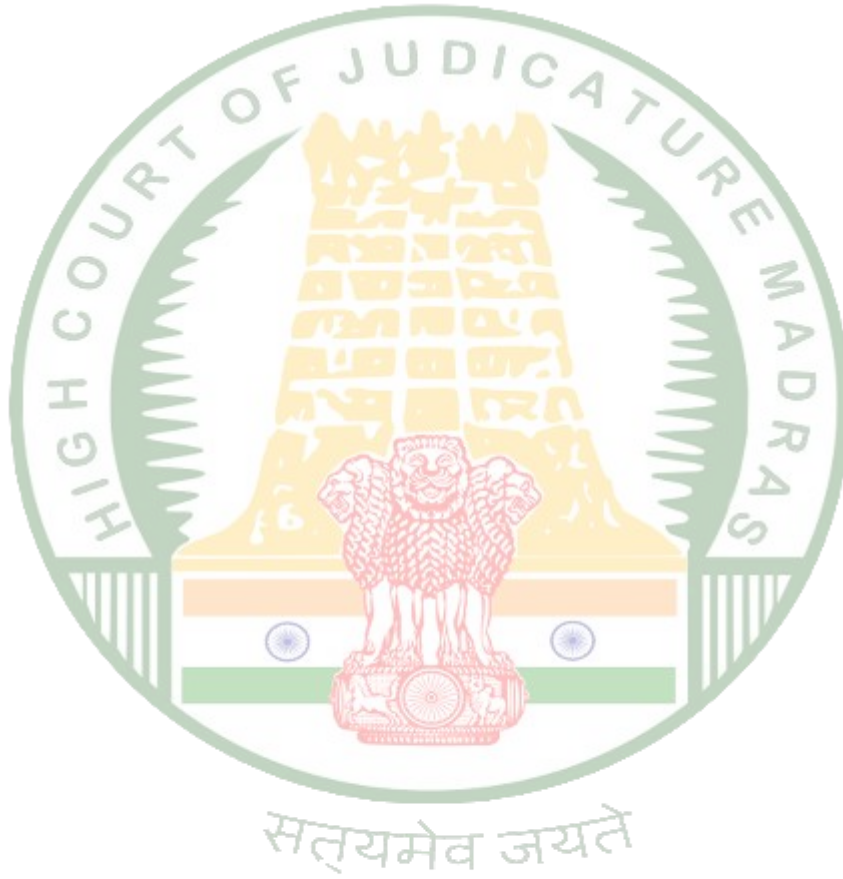
The Deputy Commissioner of Labour I,
Chennai.

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.807

+1cc to M/s.M.Malar, Advocate, S.R.No.983

C.M.A.No.3584 of 2013

RR (CO)
CS/18/03/2021



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