

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.02.2021

CORAM:

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

C.M.A.No.3712 of 2013

D.C.Ankaiah

..Appellant

Vs.

1.M/s.Sabhari Electricals,
Khaitan Customers Service Unit,
No.7, Thiagaraya Street,
T.Nagar, Chennai - 600 017.

2.Maheswara Rao

..Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, against the order dated 24.04.2013 passed in W.C.No.68 of 2007 by the Deputy Commissioner for Labour -I (Commissioner for Workmen's Compensation -I) Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondents

For R1 : R1 shifted,

Private notice -AOS not filed

For R2 : Mr.L.G.Sahadevan

J U D G M E N T

The appellant herein is the petitioner who filed W.C.No.68 of 2007, for the injuries sustained by him during the course of employment under the 1st respondent.

2. The respondents contested the case.

3. After full trial, the Deputy Commissioner for Labour -I (Commissioner for Workmen's Compensation-I) Chennai. awarded compensation by deducting the medical claim which was received by the appellant. Besides interest was awarded only from the date of default made by the respondents. Aggrieved by the order, the appellant preferred this appeal.

4. The respondent also contested the appeal. Point for consideration:

(i) whether the Deputy Commissioner for Labour -I (Commissioner for Workmen's Compensation -I) Chennai was

correct in holding that the appellant is not entitled for the amount which was claimed under medical claim policy and also entitled interest only from the date of default made by the respondents.

5. The facts of the case reveals that the appellant was employed as a Khaitan fan mechanic under the 1st respondent for a monthly salary of Rs.5,000/-, he used to attend 8 complaint per day, while so on 05.12.2002, by the instructions of the 1st respondent he went to one customers' house and attended the complaint near Annanagar, Vivek & co. At that time, a two wheeler dashed against him thereby, he sustained four fractures. Immediately, he was admitted in the private hospital and took treatment as in-patient for about 10 days. Even after that he was not completely recovered and unable to do his work as he did before. So he filed a petition for compensation against the respondents.

6. To support his case, the appellant / petitioner relied on the documents which were marked as Exs.P.1 to Ex.P.12 and he was examined as P.W.1 and the Doctor was examined as P.W.2 and on the side of the respondents, owner was examined as R.W.1 and Ex.R.1 to Ex.R.3 were marked.

7. According to the 1st respondent, he admits the employment of the appellant / petitioner and also submits that he applied medical claim policy for the employee's. Accordingly, Rs.65,000/- was paid by the insurer to this appellant even after that he completely recovered and continued his work, so he prayed to dismiss the petition.

8. The learned counsel for the 2nd respondent submits that already the appellant received medical insurance claim.

9. Considering the oral and documentary evidence the Commissioner for Labour granted the award by considering that medical insurance claim was received by the appellant / petitioner. But the counsel for the appellant argued that as per the medical certificate issued by the Doctor P.W.2, the movement of the left leg knee was restricted to 60 degree and his disability is fixed 40 %. But the Commissioner for Labour, considering the entire evidence as well as the nature of the injury fixed 30% as loss of earning capacity. He further submitted that the Commissioner for Labour is not empowered to reduce the loss of earning capacity by ignoring the certificate issued by the Doctor. Further he also contended that the appellant received Rs.5,000 per month as salary which was not denied by employer R1. But without considering this aspect the Tribunal fixed salary of Rs.1994.75 paise erroneously, hence he prayed to fix the salary of Rs.5,000/- per month.

10. On perusal of the records, the 1st respondent admits that the appellant was employed under him and also admits that he gave salary of Rs.5,000/- to the appellant at the time of the accident, when the employer himself admits that he had paid Rs.5,000/- to the appellant, without considering this admission the Labour Commissioner erroneously fixed notional income of Rs.1994.75 paise, thus, the objection raised by the appellant is sustainable one. Eventhough, there is no income proof but admission on the side of the employer is the best piece of evidence. Therefore, income of the appellant is fixed Rs.5,000/- per month. But on considering the nature of the injuries he was not permanently disabled. He is able to walk and do his work and he is a mechanic by profession. However, compensation awarded under this Act depends upon the loss of earning capacity of the employee and it is nothing to do with Medical claim availed by the employee.

11. The Commissioner for Labour rightly fixed the loss of earning capacity at 30 %. With regard to income aspect alone the award is to be modified and the appellant is entitled for the interest from the date of the accident when it falls due. But the Commissioner for Labour awarded interest, by stated that if the respondents failed to pay the amount, then they have to pay interest. This finding of the Commissioner for Labour is also set aside to the effect that interest is awarded at the rate of 12 % after 30 days from the date of accident till the date of realization. The appellant/injured is entitled to compensation as computed below.

$$\frac{60}{100} \times \frac{30}{100} \times 178.49 \times 5000 = 1,60,641/-$$

12. In the result, this Civil Miscellaneous Appeal is partly Allowed. The respondents are directed to deposit the award amount of Rs.1,60,641/- 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.

-s/d-

Assistant Registrar

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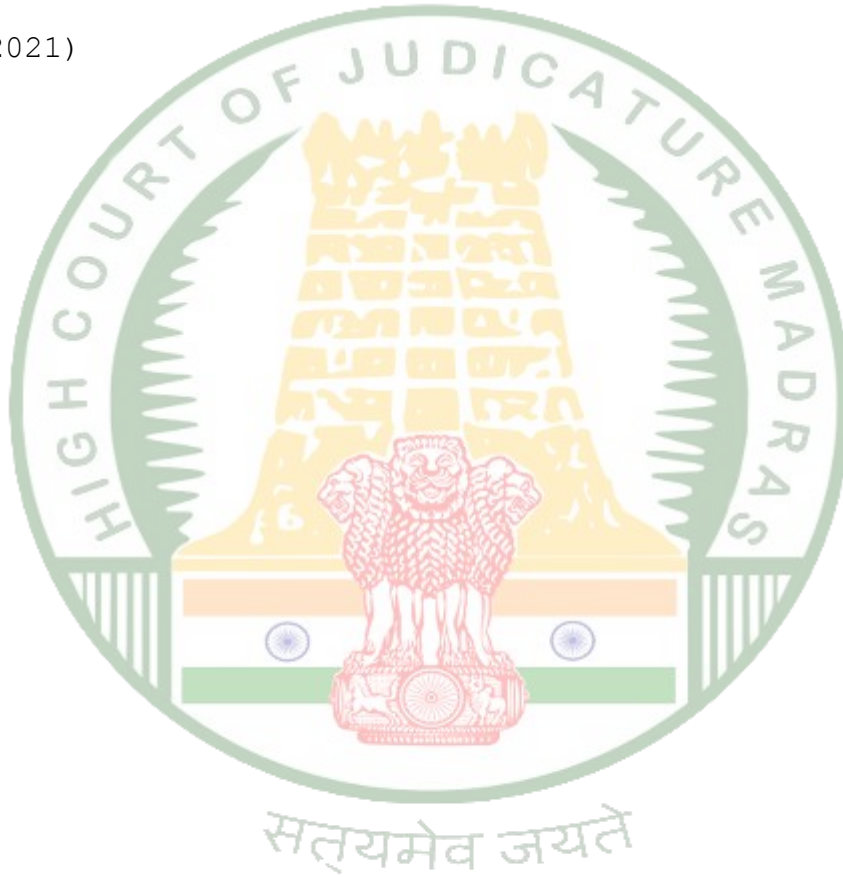
1.The Deputy Commissioner for Labour -I
(Commissioner for Workmen's Compensation -I) Chennai.

+1 CC to Mr.A.Shanmugaraj, Advocate sr 7634.

+1 CC to Mr.L.G.Sahadevan, Advocate sr 7576.

C.M.A.No.3712 of 2013

PA(CO)
SP(18/03/2021)



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