

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.01.2021
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.1409 of 2018

I.Srinivasan

... Appellant

Vs.

1.K.Kamalanathan

2.United India Insurance Co Ltd.,
Sanmuga Complex, 1-15-24, 1st Floor,
New Idappadi Road, Sankari 637 301.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, to set aside the order made in W.C.No.592 of 2009 on the file of the Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Salem Dated 12.03.2013 and for enhancement of compensation.

For Appellant : Mr.C.Kulanthaivel

For Respondents : Ms.I.Malar for R2
R1 - Exparte

J U D G M E N T

The order dated 12.03.2013 passed in W.C.No.592 of 2009, is under challenge in the present civil miscellaneous appeal.

2. The claimant is the appellant and the appeal is filed on two grounds, mainly on the ground that the percentage of disability assessed by the doctor as 37%, had not been taken into consideration for assessing the loss of income.

3. The learned counsel for the appellant contended that when the doctor assessed the disability as 37%, the appellant sustained fracture in his leg and he was working as a driver, the loss of the income is to be enhanced. Secondly, it is contended that the interest of 12% granted from the date of expiry of 30 days from the date of the award is erroneous. As per the provisions of the Employees Compensation Act, 1923, the interest is to be granted with effect from the date of the accident.

4. The learned counsel for the second respondent objected the contention by stating that the assessment of disability was given by a private doctor which cannot be relied upon for the purpose of grant of loss of income. The appellant was not assessed by the competent Government Medical Board and therefore, the certificate of private doctor is rightly not taken into consideration by the Deputy Commissioner of Labour. Under these circumstances, the Deputy Commissioner of Labour fixed 5% loss of income as per Part 2 Schedule 1 of the Act. Therefore, there is no infirmity in the award and the compensation granted is in accordance with the provisions of the Act. Therefore, the appeal is to be dismissed.

5. The accident occurred on 06.10.2009 at 3.40 a.m., when the appellant was on duty in the lorry. He was driving the Taurus lorry near V-Chatram Tole Gate, Nellure District, Andhra Pradesh. The said lorry was collided with one front going lorry and caused the accident. The appellant sustained bone fracture and multiple injuries.

6. The Deputy Commissioner of Labour adjudicated the issues and awarded compensation of Rs.26,216/-. This Court is of the opinion that in the absence of any evidence which is acceptable, this Court in the present appeal cannot modify the loss of income assessed by the Deputy Commissioner of Labour. The reliance placed on behalf of the appellant on the private doctor's assessment certificate of disability stating 37%, the same cannot be trusted upon, in view of the fact that the medical certificate was issued by the private doctor. The appellant was not examined by the competent Government Medical Board. Therefore, in the present appeal, this Court cannot consider the medical certificate of the private doctor for the purpose of enhancing the percentage of loss of income.

7. The Deputy Commissioner of Labour has adopted 5% loss of income as contemplated under the Schedule of the Act and it cannot be interfered with unless it is perverse. As far as grant of interest is concerned, as per Section 4(A) of the Act, the interest is to be calculated from the date of expiry of 30 days from the date of accident. 30 days time is granted for the employer to pay the compensation. Thus, the due falls on 31st day from the date of accident. The appellant is entitled for the interest with effect from the 31st day from the date of accident. Accordingly, 12% statutory interest is to be granted to the appellant along with the awarded amount. In all other aspects, the award stands confirmed.

8. Accordingly, the award dated 12.03.2013 in W.C.No.592 of 2009, stands modified with reference to the grant of interest alone and in all other aspects, the award stands confirmed. Accordingly, C.M.A.No.1409 of 2018 stands allowed in part. The respondent Insurance Company is directed to disburse the modified interest 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 entire amount by filing appropriate application. The payments are to be made through RTGS. No costs.

Sd/-
Assistant Registrar (CS I)

/true copy/
Sub Asst. Registrar

gsk

To
The Workmen's Compensation Commissioner cum
Deputy Commissioner of Labour, Salem.

+1 cc to Mr.C.Kulanthivel Advocate sr 503

C.M.A.No.1409 of 2018

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