

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1861 of 2018

and

C.M.P.No.14392 of 2018

M/s.The New India Assurance  
Company Limited,  
No.80, Arcot Road,  
Porur,  
Chennai.

..Appellant

Vs.

1.Thiru.Madhaiyan  
2.Thiru.Krishnamoorthy  
3.Thiru.M.Chinnadurai

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees' Compensation Act, against the Final Award dated 26<sup>th</sup> March, 2018, passed by the Commissioner for Employees Compensation, at Coonor, Nilgiris District, in E.C.No.1038 of 2015, (Old E.C.No.489 of 2009).

For Appellant : Mr.J.Michael Visuvasam

For Respondents : R1 & R3 - No appearance  
R2 - Left

J U D G M E N T

The Award dated 26.03.2013 passed in E.C.No.1038/2015 is under challenge in the present Civil Miscellaneous Appeal.

2. The Substantial Question of Law raised by the appellant reads as under:

"1. Whether the Final Award passed by the Learned Commissioner can be sustained, when the evidence of the first respondent is contrary to his own Claim Petition?

2. Whether mechanical conversion of the percentage of disablement at 49% made by Pw-2, as the loss of earning capacity suffered by the first respondent can be sustained?

3. Whether the Interest awarded on the Final Award, at the rate of 12% per annum, from the date of accident till the date of deposit, and a direction to the Appellant to pay the same can be justified, when the notice of proceedings itself was issued to the appellant only after three years and when there was deliberate delay of two years on the part of the first respondent, in filing a petition to amend the registration number of the vehicle involved in the alleged road traffic accident and implead the third respondent?"

3. The 1<sup>st</sup> respondent/claimant filed application under Section 10 of Workmen Compensation Act, seeking compensation on the ground that on 29.08.2006 at about 10.00 a.m., a Mini Auto was going for hire from Tiruchengode to Sankari Road, M.G.R.Nagar, Near Pullicar Mill and Madhaiyan was working as Driver. At that time, a borewell lorry hit against the Mini Auto and the claimant Madhaiyan sustained injuries on his right leg and right knee. He was taken to hospital and took treatment. The application was filed, seeking compensation.

4. The Deputy Commissioner of Labour adjudicated the issues with reference to the documents and evidences.

5. The learned counsel for the appellant mainly contended that the Doctors assessed the disability as 49% and therefore, the loss of earning capacity fixed as 49% is erroneous.

6. The claimant sustained fracture and at the time of accident, he was aged about 35 years and therefore, the grant of 49% loss of income is on the higher side and the same is to be reduced. It is not as if, in all cases, the percentage of disability is to be taken into account for the purpose of calculating the loss of earning capacity. All depends on facts and circumstances and in the present case, the claimant was an Auto Driver. He sustained fracture. He was treated and he is capable of continuing his job as a driver. Therefore, granting 49% of loss of earning capacity is higher side and the same is to be reduced as 40% as contended by the learned counsel for the appellant/Insurance company.

7. Apart from this, the learned counsel for the appellant made a submission that the accident occurred on 29.08.2006 and the application under Section 10 of the Workmen Compensation Act was filed in the year 2009, after a lapse of about 3 years. Further, the claimant has not filed an amendment petition even before the Deputy Commissioner of Labour for about 2 years. Thus, the Workmen Compensation was pending before the Deputy Commissioner of Labour from the year 2009 to 2018, which caused unnecessary payment of interest by the Insurance company. However, the Insurance company also failed to raise any objections in this regard before the Deputy Commissioner of Labour. If at all, there was an unnecessary

delay in disposing of the Workmen Compensation, the Insurance company ought to have raised this ground before the Deputy Commissioner of Labour or if there is any delay on the part of the claimant in filing an amendment petition, the Insurance company is bound to approach the Deputy Commissioner of Labour for passing appropriate orders during the relevant point of time. Contrarily, in the present appeal, the appellant/Insurance company cannot say that they are unnecessarily bound to pay interest for the period, in which, the amendment petition was filed when the Workmen Compensation was pending before the Deputy Commissioner of Labour.

8. As far as the Disability percentage is concerned, the Doctor assessed 49%. Thus, the loss of earning capacity may be fixed as 40% and therefore, the 1<sup>st</sup> respondent claimant is entitled for the modified compensation of Rs.1,81,977/- (Rupees One Lakh Eighty One Thousand Nine Hundred and Seventy Seven only) along with the interest at the rate of 12% per annum from the date of issuing notice by the Deputy Commissioner of Labour on 25.11.2009.

9. The interest is restricted in the present appeal and it is based on the facts and circumstances and therefore, the said reduction of interest on the ground of delay in the present appeal cannot be followed as a precedent in all other cases.

10. Accordingly, award dated 26.03.2018 passed in E.C.No.1038 of 2015 stands modified and the Civil Miscellaneous Appeal in C.M.A.No.1861 of 2018 is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner for Employees Compensation,  
Coonor, Nilgiris District.

+1cc to the Government Pleader, S.R.No.8192

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