



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.3323 of 2021

and

C.M.P.No.18896 of 2021

Managing Director
VaralakshmiStrach Industries (Pvt) Ltd
No.7/114-12G
Bommidi Main Road
Pappirettipatti Taluk
Dharmapuri District.

... Appellant/Opposite Party

Vs

Eswaran

... Respondent/Applicant

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, praying to set aside the Award dated 09.04.2021 in E.C.No.222 of 2016 on the file of Commissioner, Employee's Compensation/ Deputy Commissioner of Labour, Salem.

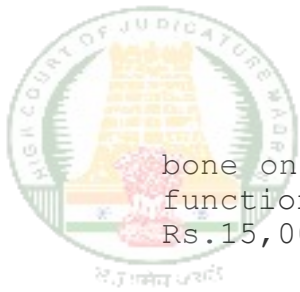
For Appellant : M/s.J.Prithivi

For Respondents : Mr.K.Krishnan

J U D G M E N T

The appeal is against the award of the Commissioner of Employees Compensation in E.C.No.222 of 2016.

2. The respondent sought for compensation for injuries suffered by him, in the accident that occurred while he was in employment as watchman with the appellant. It is stated that though he was employed as a skilled labour, he was asked to take care of watchman's duties and he was asked to climb the watch tower which is at a height of 100 ft and while he was watching the area outside the compound, the edge of the tin cut his head, he became unconscious, fell down and suffered fractures in hip



bone on the right side and wrist. Claiming that he had suffered functional disability of 100%, the respondent sought for Rs.15,00,000/- as compensation.

3. The claim was resisted contending that the respondent had climbed up the tower on his own and has fell down. Therefore, the accident did not occur in the course of employment. It was also contended that the quantum of compensation is exaggerated.

4. The learned Commissioner of Employees Compensation assessed the compensation payable at Rs.3,19,817/- based on the functional disability or loss of earning power which was assessed at 42%. The Tribunal also found that the evidence of PW2, Doctor was not controverted and therefore, the disability as assessed by the Doctor has to be accepted. Employing the multiplier of 184.17, based on the age of the respondent, and taking into account his monthly salary viz., Rs.6,891/-, the Tribunal arrived at Rs.3,19,817/-. The Tribunal also directed payment of interest at 12% from the date of accident.

5. I have heard Ms.J.Prithivi, learned counsel appearing for the appellant and Mr.K.Krishnan, learned counsel appearing for the respondent.

6. Ms.J.Prithivi, would contend that the respondent was not employed as a watchman and he had no business to climb up the tower.

7. The Tribunal as of fact found that the claim of the respondent regarding the accident is acceptable and had happened when he was employed with the appellant. I, therefore, do not see any reason to interfere with the said conclusion of the Tribunal on the factum of accident and the nature of the accident.

8. On the quantum also, the learned counsel for the appellant is not able to pick holes in the award of the Commissioner. The Commissioner has taken correct multiplier based on the age and adopted the disability at 42%. These are all statutory calculations, which cannot be interfered with, unless they are shown to be erroneous. The learned counsel for the appellant is unable to show that the calculation is erroneous. Hence, the quantum of compensation is also upheld.

9. Ms.J.Prithivi, would further contend that the claim was filed with a delay of 473 days and therefore according to her, the Tribunal erred in allowing the interest for the delay period also.



10. Under the Employees Compensation Act, claim has to be filed within two years, of course, the Commissioner of Employees Compensation has got powers to condone the delay. If the delay is more than a year or longer, the employers should not be saddled with interest for that period also. The fact that the claim was filed belatedly is not in dispute. Hence, the respondent would not be entitled to interest for the delay period of 473 days.

11. In the light of the above, the appeal is partly allowed, the award of the Commissioner of Employees Compensation is confirmed with a modification that the workman will not be entitled to interest for the delay period.

12. It is stated that the employer has already deposited the compensation amount. The Commissioner of Employees Compensation shall pay out the compensation to the workman excluding the interest for the period of 473 days and the same shall be refunded to the appellant/ employer. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

dsa

To

The Commissioner, Employee's Compensation/
Deputy Commissioner of Labour, Salem.

+1cc to Mr.J.Prithivi, Advocate, S.R.No.64028

+1cc to Mr.K.Krishnan, Advocate, S.R.No.64979

CMA No.3323 of 2021

PVS (CO)
SU(10/01/2022)