

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2007 of 2017

and

C.M.P.No.10820 of 2017

M/s.The New India Assurance
Company Ltd.,
-Motor Third- Party Claims Hub-,
No.45, Moore Street,
Chennai - 600 001

..Appellant

Vs.

1.Thiru.P.Elangovan

2.M/s.T.S.M.Cargo Movers,
No.25/1, Dr.Ambedkar Nagar,
100 feet Road,
Kolathur,
Chennai - 600 009

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, against the Final Award dated 20th September, 2016, (received on 16.03.2017), passed by the Commissioner for Employees Compensation (Deputy Commissioner of Labour-II, Chennai), in E.C.No.331 of 2013.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.K.Varadhakamaraj

[For R1]

Mr.G.David

[For R2]

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J U D G M E N T

The Award dated 20.09.2016 passed in E.C.No.331 of 2013 is under challenge in the present Civil Miscellaneous Appeal.

2. M/s. The New India Assurance Company Limited is the appellant and the Substantial Question of law raised is that whether the Learned Deputy Commissioner of Labour was correct in

determining the loss of earning capacity of the I Respondent at 75%, when the medical practitioner examined as Aw2 has not assessed the functional disablement and the resultant loss of earning capacity in terms of Section.4 (1)(c)(ii) of the WC Act; whether the Learned Deputy Commissioner was right in determining the loss of earning capacity at 75%, when the PW2 - Doctor had failed to follow Explanation II to Section.4(1)(c)(ii) of the Employees Compensation Act, 1923.

3. The learned counsel appearing on behalf of the appellant mainly contended that the respondent/claimant suffered two accidents. The First Accident occurred and in respect of the first accident, the appellant/New India Assurance Company is liable to pay compensation. Thereafter, the second accident occurred within a short span of time and therefore, the loss of earning capacity of 75% is no way connected with the accident occurred in a vehicle, which was insured with the appellant/New India Assurance Company. In other words, the learned counsel for the appellant is of an opinion that as far as the first accident is concerned, the claimant sustained injuries, which is not so serious. During the second accident, he sustained further injuries, which became grievous and therefore, the fixation of 75% towards loss of earning capacity by taking into consideration the second accident is improper and therefore, the appellant/Insurance company is constrained to move the present appeal. When the respondent/claimant met with two accidents and the overall loss of earning capacity is 75%, the Insurance company is not liable to pay the entire percentage of earning capacity as the appellant company is liable to pay compensation in respect of the first accident and they are not liable to pay compensation with reference to the second accident suffered by the claimant.

4. The learned counsel for the appellant is of an opinion that 50% of the loss of earning capacity may be appropriate, this Court is of an opinion that 50% of loss of earning capacity is just and reasonable. Thus, the same is to be accepted.

5. In this view of this matter, the award dated 20.09.2016 passed in E.C.No.331 of 2013 is to be modified and 75% of loss of earning capacity fixed by the Deputy Commissioner of Labour is modified as 50% and accordingly, the first respondent/claimant is entitled for 50% towards the loss of earning capacity. Thus, the respondent/claimant is entitled for a total compensation of Rs.2,65,646/~(Rupees Two Lakhs Sixty Five Thousand Six Hundred and Forty Six only) along with the interest at the rate of 12% per annum on expiry of 30 days from the date of accident.

6. Thus, the Award dated 20.09.2016 passed in E.C.No.331 of 2013 is modified and the Civil Miscellaneous Appeal No.2007 of 2017 stands allowed in part. The respondent/claimant is permitted to withdraw the balance amount along with the interest at the rate of 12% from the date of expiry of 30 days from the date of accident and the balance deposit, if any, is to be returned to the appellant/New India Assurance company and the respective parties are bound to file appropriate application and the payments are to be made through RTGS. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner of Labour-II
The Commissioner for Employees Compensation,
Chennai.

2.The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.6721

+1cc to Mr.J.Michael Visuwasam, Advocate SR.6978

C.M.A.No.2007 of 2017

BR(CO)
CB(03/03/2021)

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