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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.09.2021

Pronounced on : 14.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.3036 of 2017

and

CMP No.18415 of 2017

M/s.The United India Insurance
Company Ltd.,
No.73-C, M.T.H. Road,
Ambattur,
Chennai - 600 053.

... Appellant

versus

1. Mariyappan
2. Ganesan

... Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Employees' Compensation Act, 1923 as against the final award dated 07.10.2016 (received on 07.09.2017), passed by the Commissioner for Employees Compensation (Deputy Commissioner of Labour - II, Chennai), in E..C No.142 of 2014.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.F. Terry Chella Raja

JUDGMENT

This appeal has been filed by the Insurance Company challenging the Final Award, dated 07.10.2016 passed by the Employees' Compensation (Deputy Commissioner of Labour - II), Chennai in E.C. No.142 of 2014.

2. The Deputy Commissioner of Labour - II, Chennai under the impugned Award has directed the Appellant / Insurance Company to pay the first respondent / applicant / claimant a compensation of Rs.1,75,131/- together with interest at 12% for the injuries



sustained by the 1st respondent / applicant as a result of an accident between an Autorickshaw bearing Registration No.TN-07-W-0228 and a Van bearing Registration No.TN-20-AM-0569 on 27.02.2014.

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3. It is the case of the 1st respondent / applicant that he is a Driver employed by the 2nd respondent (opposite party) and only during the course of his employment, the accident happened, which resulted in him sustaining injuries and therefore, he is entitled to claim compensation from the Appellant / Insurance Company, who is the insurer of the offending van bearing Registration No.TN-20-AM-0569.

4. Before the Deputy Commissioner for Workmen's Compensation, Labour - II, Chennai the 1st respondent had sought for a compensation of Rs.5,00,000/-. A counter was also filed by the appellant / Insurance Company before the Commissioner denying their liability on the ground that a) there is collusion between the 1st and 2nd respondents, (b) the 1st respondent / applicant has sustained very simple injuries and he has not suffered any disability and there is no loss of earning capacity.

5. By a final Award dated 07.10.2016 passed in E.C. No.142 of 2016, the Deputy Commissioner for Workmen Compensation (Labour - II), Chennai directed the appellant / Insurance Company to pay a compensation of Rs.1,75,131/- together with interest at 12% p.a. to the 1st respondent / applicant, as detailed hereunder :

Monthly income	: Rs.7699/-
Petitioner's age at the time of the accident:	34
Factor applied	: 189.56
Loss of earning capacity	: 20%
Thus the compensation works out to Rs.1,75,131/-	
(60/100 x 189.56 x 7699 x 20%)	

6. Aggrieved by the same, the Insurance Company has filed this appeal.

7. Heard the learned counsels on both sides.

8. The learned counsel for the appellant / Insurance Company drew the attention of this Court to Section 3(1)(a) of the Workmen's Compensation Act, 1953 and also to the following documents, which has been filed in the Additional Typed set of papers :

a) photo copy of the accident register, dated 27.02.2014, which has been marked as Ex.P2 before the



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Deputy Commissioner;

b) Discharge summary, dated 01.03.2014, which has been marked as Ex.P3 before the Deputy Commissioner;

c) Wound Certificate, which has been marked as Ex.R1 before the Deputy Commissioner and

d) Disability certificate, dated 01.04.2016, which has been marked as Ex.P9 before the Deputy Commissioner

9. He would submit that since the treatment for the alleged partial disablement of the 1st respondent / applicant has not exceeded three days, the question of payment of compensation to the 1st respondent under the Workmen's Compensation Act will not arise as per Section 3(1)(a) of the Act. He would also submit that as seen from the medical records, which have been marked as Exhibits, the assessment of disablement of the 1st respondent at 20% made by the Doctor (PW2) is not in consonance with the treatment records of the 1st respondent. According to him, as seen from the treatment records, the 1st respondent / applicant has sustained only simple injuries and therefore not entitled for compensation under the Act. He would also submit that the 1st respondent / applicant has also not chosen to examine an independent witness before the Commissioner to prove his alleged loss of earning capacity. He also drew the attention of this Court to the impugned Award and would submit that the Doctor (PW2) during the course of his cross examination has himself admitted that there are no fractures sustained and there is also no blood clot on the 1st respondent / applicant's head and therefore, having sustained only simple injuries, which has not caused any partial and permanent disablement, the 1st respondent / claimant is not entitled for any compensation.

10. In support of his submissions, the learned counsel for the appellant / Insurance Company drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of Raj Kumar versus Ajay Kumar and another reported in 2010 (2) TNMAC Page 581 (SC), which has dealt with the procedure for the assessment of permanent disability. According to him, the disability of the 1st respondent / claimant assessed by the Doctor at 20% has not been done in accordance with the aforesaid judgment of the Hon'ble Supreme Court.

11. Per contra, the learned counsel for the 1st respondent / applicant would submit that the issues raised by the appellant are purely questions of fact and therefore, the appeal filed by the Insurance Company is not maintainable under Section 30 of the Workmen's Compensation Act. He would reiterate the contentions of the 1st respondent / applicant before the Commissioner and would submit that the Commissioner has rightly awarded compensation under the impugned award in favour of the 1st respondent / applicant. In support of his submissions that



the present issue raised by the appellant / Insurance Company are purely questions of fact, he relied upon the following authorities :

- a) Golla Rajanna, etc. versus The Divisional Manager and another, etc. reported in 2017 (1) TNMAC 1 (SC) and
- b) North-East Karnataka Road Transport Corporation versus Sujatha reported in 2018 (2) TN MAC 577 (SC)

Discussion :

12. The Doctor (PW2) has issued a disability certificate after examining the 1st respondent / applicant which has been marked as Ex. P9 before the Commissioner. As per the said disability certificate, the Doctor has assessed the partial permanent disability of the 1st respondent / applicant at 20%. In his remarks, the Doctor has observed as follows :

- a. Post traumatic headache, giddiness and tremors in hands
- b. Memory deficit
- c. Disfiguring scar in the forehead.

13. As seen from the discharge summary (Ex.P3), dated 01.03.2014 issued by the Government Stanley Medical College and Hospital, the 1st respondent / applicant was hospitalized between 27.02.2014 and 01.03.2014. Just because, the 1st Respondent was hospitalized only for a period of three days, it cannot be said that the 1st Respondent has not suffered partial permanent disability of 20% as assessed by the Doctor in his disability certificate dated 01.04.2016 marked as Ex. P9. The Doctor who examined the 1st Respondent/ claimant during the course of his cross examination has also not admitted that the 1st respondent would not have suffered loss of earning capacity as a result of the injuries sustained by him due to the accident during the course of his employment.

14. No contra evidence has also been produced by the appellant / Insurance Company to disprove the assessment of 20% partial permanent disability of the 1st respondent / applicant by the Doctor. The Doctor (PW2) who has assessed the 1st respondent / applicant's disability has also denied the allegations of the appellant / Insurance Company that the 1st respondent / applicant has sustained only simple injuries during the course of his cross examination .

15. The Doctor in the Disability certificate has observed that the 1st respondent suffers from Post traumatic headache, giddiness and tremors in his hands and there is also memory deficit which will clearly indicate that the 1st respondent / applicant has suffered partial and permanent disability. It is not necessary that there must be fracture for the purpose of



assessing the injuries sustained by the accident victim as a partial permanent disability. In many cases, without there being a fracture, the injuries sustained by the accident victim may result in partial permanent disability. The disability assessment depends on the facts and circumstances of each case.

16. A categorical stand has been taken by the 1st respondent / applicant that the injuries sustained by him has resulted in him suffering loss of earning capacity. No contra evidence has been produced by the appellant/ Insurance Company to disprove the said contention. This Court cannot differ with the views of the Doctor when no contra evidence to disprove the same has been produced by the Appellant Insurance Company. The appellant / Insurance Company has raised doubts about the 1st respondent's disability as assessed by the Doctor. According to them, the accident register, dated 27.02.2014 (Ex.P2), the Discharge summary, dated 01.03.2014 (Ex.P3),) Wound Certificate, Ex. R1 and Disability certificate, dated 01.04.2016 (Ex.P9) will reveal that the nature of injuries sustained by the 1st respondent / applicant would not entitle him to claim compensation as he has not suffered loss of earning capacity.

17. When there is no contra evidence produced by the appellant / Insurance Company to prove that the 1st respondent / applicant has not suffered any partial permanent disability, this Court will have to necessarily believe the assessment made by the Doctor. In fact in the counter statement filed by the appellant / Insurance Company before the Commissioner excepting for making general statements with regard to the 1st respondent's disability, no injury specific plea was taken by them questioning the 1st respondent / 1st applicant's claim for compensation for the loss of his earning capacity.

18. Section 3(1)(a) of the Employee's Compensation Act, 1923 reads as follows :

in respect of any injury which does not result in the total or partial disablement of the (employee) for a period exceeding (three) days;

19. As seen from the aforesaid Section, the period of hospitalization is immaterial for the purpose of assessing the accident victim's partial or permanent disability. The only requirement is that the injury should result in the total or partial disablement of the employee for a period exceeding 3 days. In the case on the hand, admittedly, the 1st Respondent was hospitalized between 27.02.2014 and 01.03.2014 for a period of 3 days. The Doctor has also assessed the partial permanent disability of the 1st Respondent at 20%. As observed earlier, no contra evidence has been produced by the Appellant Insurance



Company before the Commissioner to disprove the said assessment. Therefore, this Court is of the considered view that the assessment made by the Doctor (PW2) of the 1st respondent / applicant's disability at 20% will have to be accepted. When there is no contra evidence and unless and until the medical reports which have been marked as Exhibits including the disability certificate which has been marked as an Exhibit before the Commissioner are found to be fabricated documents, this Court will have to necessarily accept the same to be true.

20. The decisions relied upon by the learned counsel for the 1st respondent / applicant in the cases of a. Golla Rajanna, etc. etc. Vs. The Divisional Manager and another, etc. etc. reported 2017 (1)TN MAC 1 (SC) and b. North-East Karnataka Road Transport Corporation Vs. Sujatha reported on 2018 (2) TN MAC 577 (SC) squarely applies to the facts of the instant case also as this Court while exercising powers under Section 30 of the Workmen's Compensation Act, 1923 cannot re-appreciate the evidence available on record before the Commissioner when only based on the available evidence the impugned award has been passed. There is also no evidence available on record to show that the Commissioner has not followed Rajkumar's case referred to supra while assessing the disability of the is respondent.

21. The relevant paragraph in the case of Golla Rajanna, etc. Vs. The Divisional Manager and another, etc. etc. reported 2017 (1)TN MAC 1 (SC), referred to supra reads as follows

10. The Workmen's Compensation Commissioner, having regard to the evidence, had returned a finding on the nature of injury and the percentage of disability. It is purely a question of fact. There is no case for the Insurance Company that the finding is based on no evidence at all or that it is perverse. Under Section 4 (1)(c)(ii) of the Act, the percentage of Permanent Disability needs to be assessed only by a qualified Medical Practitioner. There is no case for the Respondents that the Doctor, who issued the Disability Certificate is not a qualified Medical Practitioner, as defined under the Act. Thus, the Workmen's Compensation Commissioner has passed the Order based on the Certificate of Disability issued by the Doctor and which has been duly proved before the Workmen's Compensation Commissioner.

11. Under the scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts. The Parliament has thought it fit to restrict the scope of the Appeal only to Substantial Questions of Law, being a Welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which



also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act.

22. The relevant paragraph in the case of North-East Karnataka Road Transport Corporation Vs. Sujatha reported on 2018 (2) TN MAC 577 (SC) reads as follows :

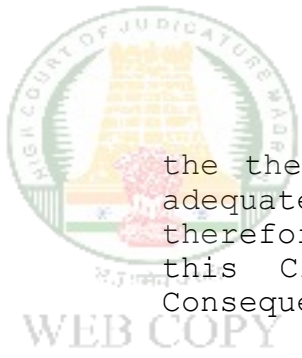
9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the Employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of Employee and Employer, what was the age and monthly Salary of the Employee, how many are the dependents of the deceased Employee, the extent of disability caused to the Employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the Employer to cover the incident, etc. are some of the material issues which arise for the just decision of the Commissioner in a Claim Petition when an Employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue/s his employer to claim Compensation under the Act.

16. Now coming to the facts of this case, we find that the Appeal before the High Court did not involve any Substantial Question of Law on the material questions set out above. In other words, in our view, the Commissioner decided all the material questions arising in the case properly on the basis of evidence adduced by the parties and rightly determined the compensation payable to the Respondent. It was, therefore, rightly affirmed by the High

Court on facts.

17. In this view of the matter, the findings being concurrent findings of fact of the two Courts below are binding on this Court. Even otherwise, we find no good ground to all for any interference on any of the factual findings. None of the factual findings are found to be either perverse or arbitrary or based on no evidence or against any provision of law. We accordingly uphold these findings.

23. For the foregoing reasons, there is no substantial question of law involved in this appeal as the issues raised by



the the Appellant are purely questions of fact which have been adequately and correctly considered by the Commissioner and therefore there is no merit in this appeal and accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi2

To

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

+lcc to M/s.M.Malar, Advocate Sr No.46428

+lcc to Mr.J.Michael Visuvasam, Advocate Sr No.46267

CMA No.3036 of 2017

KG (CO)
PR (06/10/2021)