

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.352 of 2017
and CMP.No.2548 of 2017

M/s. The New India Assurance Company Limited,
Shevapet, Salem.

.. Appellant

Vs.

1.Sivakumar

2.A.Panneerselvam

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, Praying to set aside the revised final award dated 17.06.2016 passed by the Learned Commissioner of Labour, Salem in W.C.No.82 of 2013.

For Appellant : Mr.Michael Visuvasam

For Respondents: M/s.C.Munusamy for R1
No Appearance for R2

J U D G M E N T

The appellant herein is the second opposite party in W.C.No.82 of 2013, filed by the petitioner viz., Sivakumar, against compensation for the injury sustained by him, due to the accident happened on 03.10.2012 at about 11.30 p.m., as a driver employed under the second respondent herein. The lorry bearing registration No.TN-47AC-1838, returning from Tuticorin to Salem, which was going in front of his vehicle, suddenly he applied the brake

without any signal, thereby, front portion of his lorry was damaged. The alternate driver viz., Ramesh died on the spot itself, this respondent sustained grievous injuries and taken treatment to Government Hospital and then shifted to private hospital, inspite of treatment he was not fully recovered, so he claimed compensation for the injuries. The insurance company also contested the case.

2. On the side of the victim, the documents Exs.P1 to P16 were marked, the victim along with Doctor examined as Pws.1

and 2 and there is no evidence on the side of the respondent and considering all these evidence, the Commissioner of Labour initially awarded Rs.4,41,455/- along with medical expenses of Rs.5,15,161/- awarded. Subsequently, suo motu, he reviewed his own order by enhancing the loss of earning capacity by including the injury said to be sustained by the victim in his upper jaw and considering the damages of the teeth and enhanced the rate of disability and re-fixed at 25% disability, based upon the certificate Ex.P17 and enhanced the compensation to Rs.7,18,231/-. Aggrieved by the subsequent enhancement alone the insurance company has preferred this appeal.

3. Point for consideration:

"Whether the Commissioner of Labour can suo motu review his own order.?"

4. The learned counsel appearing for the appellant submits that considering the entire evidence, the Commissioner of Labour fixed loss of earning capacity at 50% and compensation was awarded accordingly along with medical expenses, which comes totally to Rs.5,15,161/-. Subsequently, he added another 25% by suo motu review his order by including the disability caused to the victim with regard to the injury sustained in his upper jaw as dental disability.

5. The learned counsel for the appellant further submit that as a driver, the loss of earning capacity of the victim, cannot be affected by alleged dental injury, besides, it is also not connected with his avocation, i.e., driving of the vehicle.

6. The learned counsel for the respondent submits that in the said accident the victim sustained multiple injuries. Thereby, the Commissioner of Labour considered the face injury and enhanced loss of earning capacity. So, he prays to dismiss the appeal.

7. It is admitted fact that the victim is driver by profession. The accident was not disputed by this appellant. To prove the injuries, the Doctor was examined as PW.2, as per his evidence, the victim sustained fractures and even after the treatment was not able to work. Thereby, he could not do any work. So, the loss of earning capacity is fixed at 50%. Based upon that along with medical expenses, the Commissioner of Labour awarded on 21.03.2016. Subsequently, Suo motu, the case was reviewed by the Commissioner of Labour on 17.06.2016, stating that the injury sustained in the upper jaw of the victim was taken into consideration, which was mistakenly left out, while passing the earlier order and enhanced compensation to Rs.6,44,525/-. But as per Rule 32(2), the Commissioner of Labour is not permitted to suo motu his review order, which

reads as follows:

32 (2) The Commissioner, at the time of signing and dating his judgment, shall pronounce his decision, and thereafter no addition or alteration shall be made to the judgment other than the correction of clerical or arithmetical mistake arising from any accidental slip or omission

Therefore, the subsequent enhancement at 25% made by the Commissioner of Labour adding one more disability i.e., Dental injury as alteration in the judgement is unwarranted one. Hence, that portion alone is set aside as it is not permitted under Rule 32(2) of Act and the earlier order passed by the Deputy Commissioner of Labour, Salem, dated 21.03.2016 awarding of Rs.5,16,000/- is confirmed. Accordingly, subsequent order dated 17.06.2016 is set aside.

8.Hence, this Civil Miscellaneous Appeal is allowed and the order dated 21.03.2016 passed in E.C.No.82 of 2013 by the Deputy Commissioner of Labour, Salem, is confirmed. The learned counsel for the appellant submits that the entire award amount awarded by the Deputy Commissioner of Labour, Salem has already been deposited and hence if the said amount had not been withdrawn by the claimant, the same may be permitted to be withdrawn by the appellant. Consequently, connected miscellaneous petition is closed. No cost.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Ub

TO

The Commissioner for Employees Compensation
(Deputy Commissioner of Labour), Salem.

+1cc to Mr.C.Munusamy, Advocate, S.R.No. 12614

+1cc to Mr.J.Michel Visuvasam, Advocate, S.R.No.12642

C.M.A.No.352 of 2017

GMI (CO)

GN(09/04/2021)