

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.599 of 2017

A.Jeyaraj

.. Appellant

vs.

1.The Management of
ELGI Equipments Limited,
Industrial Complex,
Singanallur,
Coimbatore.

2.United India Insurance Company Limited,
24, Mill Road,
Coimbatore.

.. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923 against the Fair and Final Order dated 03.07.2009 passed by the Deputy Commissioner of Labour, Coimbatore in W.C.No.67 of 2005.

For Appellants : Mr.G.B.Saravana Bhavan

For Respondent : Mr.S.Ravindran,
Senior Counsel
for Mr.S.Bazeer Ahamed for R1
Mr.J.Michael Visuvasam for R2

O R D E R

The award dated 03.07.2009 passed in W.C.No.67 of 2005 is under challenge in the present Civil Miscellaneous Appeal.

2. The substantial question of law raised in the appeal reads as under:

(i) whether the deeming fiction of upper limit of monthly wages being fixed at Rs.4000.00 vide the explanation II below clause (a) and (b), would apply to cases falling under clause © of Section 4(1) of the Workmens' Compensation Act, 1923.

(ii) whether the interest over the compensation due is

payable under Section 4A(3)(a) from the date of accident or the date of determination of compensation by the commissioner under the said Act.

(iii) Is it correct to correlate the loss of earning capacity only to the physical disability determined by the doctor, without considering how the disability reduces earning capacity in every employment which the injured was capable of undertaking.

(iv) Is it not total permanent disablement, if by the result of the injury the Industrial worker had sustained acute lumbrosacral strain, and is not able to lift weights over 10 kgs, and has difficulty in carrying out routine daily activities.

3. All the substantial questions of law are relatable to the factual aspects. However, the fact remains that an application was filed seeking compensation by the appellant on the ground that while he was working in the first respondent/Engineering Industry, who is engaged in the manufacture of Air and Screw Compressors, Auto Garage Equipments etc, he was assigned with the duty of compressor top block assembly, wherein he had to do the job of lifting the top block weighing about 70 kgs. While lifting the top block from the ground, the appellant suddenly felt unbearable pain in his back spinal chord area, and severe pain left him unconscious for some time. He could not either walk, or do his job as usually. He had taken treatment at Kovai Medical Centre Hospital as in-patient.

4. The learned counsel appearing on behalf of the Insurance Company states that after taking treatment, he attended the duty and served for about six months. However, the Deputy Commissioner of Labour adjudicated the issues and arrived a finding that the disability is to be assessed as 15% and accordingly, granted a compensation of Rs.67,284/-.

5. The policy coverage was established and the liability was fixed on the second respondent/Insurance Company. Though the learned counsel appearing for the second respondent/Insurance Company made an attempt to argue the liability, no appeal has been preferred by the Insurance Company. However, it is an admitted fact that the award amount had already been deposited. Thus, this Court is of the opinion that the Insurance Company cannot be exonerated from the liability. However, the Deputy Commissioner of Labour fixed the monthly income of the workman as Rs.4,000/- and the loss of earning capacity was fixed as 15%. This being the factum, there is no error in respect of the quantification of compensation and this Court do not find any acceptable ground for the purpose of enhancing the compensation.

