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C.M.A.(MD)Nos.644 of 2013 and 1281 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.06.2021

Delivered On : 06.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)Nos.644 of 2013 and 1281 of 2015

and

M.P. (MD)No.2 of 2015

C.M.A. (MD)No.644 of 2013 :

P.Ravi

..Appellant/Petitioner

Vs.

1.A.Balu

2.The Divisional Manager,

National Insurance Company Ltd.,

Divisional Office, 74 A, Paramathi Road,

Namakkal.

.. Respondents

Prayer in C.M.A. (MD)No.644 of 2013 : This Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, to enhance the award passed in W.C.No.125 of 2008 dated 05/08/2012 and sent to Appellant on 05/11/2012, on the file of the Commissioner for Workmen Compensation, Madurai.

For Appellant : Mr.Liaket Ali

For 2nd Respondent : Mr.D.Sivaraman

For 1st Respondent : No Appearance

C.M.A. (MD)No.1281 of 2015 :

The Divisional Manager,

National Insurance Company Ltd.,

Divisional Office, 74 A, Paramathi Road,

Namakkal.

..Appellant/Respondent No.2

Vs.

1.P.Ravi

.. Respondent 1/Petitioner

2.A.Balu

.. Respondent 2/Respondents

Prayer in C.M.A. (MD)No.1281 of 2015 : This Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, to set aside the judgment and decree passed in W.C.No.125 of 2008 dated 23.08.2012, on the file of the Commissioner for Workmen Compensation, Madurai.



For Appellant : Mr.D.Sivaraman
For 1st Respondent : Mr.Liakat Ali
For 2nd Respondent : No Appearance

COMMON JUDGMENT

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This Civil Miscellaneous Appeals have been filed against the award passed in W.C.No.125 of 2008 dated 23.08.2012, on the file of the Commissioner for Workmen Compensation, Madurai.

2.The appellant in C.M.A.(MD)No.644 of 2013 is the petitioner, the respondents 1 and 2 in C.M.A.(MD)No.644 of 2013 are the respondents in the claim petition. The appellant in C.M.A.(MD) No.1281 of 2015 is the second respondent, the 1st respondent in C.M.A.(MD)No.1281 of 2015 is the petitioner and the 2nd respondent in C.M.A.(MD)No.1281 of 2015 is the first respondent in the claim petition. The claimant has filed a claim petition in W.C.No.125 of 2008, claiming compensation for the injuries sustained by him, in an accident that took place on 08.06.2007. The Tribunal has awarded a sum of Rs.2,03,318/- (Rupees Two Lakhs Three Thousand Three Hundred and Eighteen only) as compensation. Against which, the claimant filed an appeal in C.M.A.(MD)No.644 of 2013 and the Insurance company filed an appeal in C.M.A.(MD)No.1281 of 2015.

3.A brief substance of the claim petition in W.C.No.125 of 2008 is as follows:

The claimant was working as the driver in the lorry bearing registration No.KN-01-4786 that belongs to the first respondent. The claimant was transferring cable bundles to Mathur at Karnataka. On 08.06.2007 at about 07.00 a.m., when the claimant was trying to unload the bundles, he fell down from the vehicle and he took treatment in Karnataka Mandiya Government Hospital and then in Madurai Saravana Hospital from 09.06.2007 till 25.06.2007 and he had undergone surgery and then he took treatment as out patient. He was 28 years old and he was earning Rs.300/- per day and he demanded a sum of Rs.5,08,296/- (Rupees Five Lakhs Eight Thousand Two Hundred and Ninety Six only) as compensation.

4.Brief substance of the counter filed by the second respondent therein is as follows:

The Workmen Compensation Act is not applicable to the case of the claimant. Adjusting the load is not the work of the driver and there is no necessity for the driver to climb the lorry. The injuries, mode of treatment and the disability are to be proved. The petitioner has to prove the validity of the driving licence.

5.On the side of the petitioner, 2 witnesses were examined and 14 documents were marked. Five documents were marked as Court documents. On the side of the respondents, two witnesses were examined and five documents were marked. After trial, the Tribunal



has awarded a sum of Rs.2,03,318/- (Rupees Two Lakhs Three Thousand Three Hundred and Eighteen only) as compensation to be paid by the Insurance company. Against which, the appellants have preferred these Civil Miscellaneous Appeals.

6.Since the appeals have been filed against the same order in W.C.No.125 of 2008, C.M.A.(MD)No.1281 of 2015 is taken as lead case.

7.On the side of the appellant, it is stated that the claim petition failed to prove the employer and employee relationship between the second respondent and the claimant. No FIR was registered with regard the alleged accident. The records from Saravana hospital, Madurai reveals that the claimant fell down from the bike. No such accident took place. Loss of earning capacity was wrongly fixed by the Labour Court.

8.The points for consideration reads as follows:

"(I)Whether the learned Workmen Compensation Commissioner was right in fixing the loss of earning capacity at 40% by himself against the procedure contemplated under Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923 and the law laid down by the Apex Court in Mubasir Ahamed's case reported in 2007 (1) TNMAC 214 ?

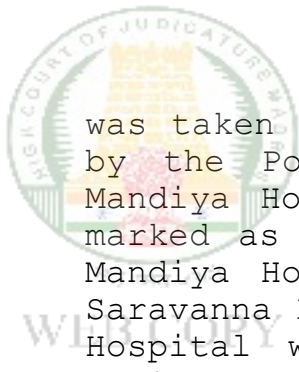
(ii)Whether the learned Workmen's compensation Commissioner is correct in directing the appellant/Insurance Company to pay interest on the award, from the date of the accident, which is in contradiction to Section 4A(3) of the Workmen's Compensation Act ?"

Issue No.1:

9.On the side of the appellant, it is stated that there is no functional disability and the Labour Court has wrongly fixed the disability as 40%. There was no FIR. The accident itself is doubtful. In support of this contention, a judgment passed by the Hon'ble Supreme Court in the case of **Saberabibi Yakubhai Shaikh and Others v. National Insurance Co. Ltd., and others** reported in **2014 ACJ 467** is cited.

10.On the side of the first respondent, it is stated that when the claimant was doing his duty, he parked the vehicle and has to adjust the bundle loaded in the lorry. When he was adjusting the same, the bundle fell on him and his left leg was fractured. The accident was during the course of employment and question of facts cannot be decided by this Court. Only question of law can be raised by the appellant.

11.On the side of the first respondent, it is further stated that the accident took place in Karnataka. Though intimation was sent to the Police, before the arrival of the Police, the claimant



was taken to Madurai for treatment. Since no statement was recorded by the Police, no FIR was registered. But discharge card from Mandiya Hospital and discharge summary from Mandiya Hospital were marked as Ex.P5 and Ex.P6. The receipt of payment of fees in the Mandiya Hospital was marked as Ex.P11. The case history from the Saravanna Hospital was marked as Ex.C1. The case sheet from Mandiya Hospital was marked as Ex.C2. The I.D. Card of Medical Record Officer from Mandiya Hospital was marked as Ex.C3 and the Authorisation letter was marked as Ex.C4. AIR copy was marked as Ex.C5.

12.Discharge summary from Saravanna Hospital was marked as Ex.P7. On the basis of the evidence of the doctor and on the basis of Ex.P2, Ex.P12 to Ex.P14, wound certificate, the Labour Court has fixed the disability as 40% which is reasonable. The investigation Officer engaged by the Insurance company gave a report stating that there was no accident. The report was marked as Ex.R1. The documents, Ex.P5, Ex.P7 and Ex.P11 and Ex.C1 to Ex.C5 reveals that the claimant got injuries at Mandiya. Ex.P7 reveals that he continued treatment in Madurai. These things are factual matrix and this Court need not go into the factual matrix at the appellate stage. The question of law raised by the appellant is regarding the fixation of disability by the Labour Court, which is only a question of fact and hence, the question raised by the appellant is not maintainable.

Issue No.2:

13.On the side of the appellant, it is stated that the Labour Court directed the appellant to pay interest for the award amount, from the date of accident in contradiction to Section 4A(3) of the Workmen Compensation Act. Under Section 4A(3) of the Workmen Compensation Act, the claimant is entitled to interest for the award amount from the 30th day of award. Hence, the interest has to be calculated from the 30th day of award I.e. From 23.09.2012.

14.For the above reasons, C.M.A.(MD)No.644 of 2013 is dismissed and C.M.A.(MD)No.1281 of 2015 is partly allowed. The interest is reduced to 6% to be paid from the 30th day of the award. The claimant is entitled to a sum of Rs.2,03,318/- (Rupees Two Lakhs Three Thousand Three Hundred and Eighteen only) as compensation with interest at the rate of 6% from the 30th date of the award till the date of realization.

15.The appellant is directed to deposit Rs.2,03,318/- (Rupees Two Lakhs Three Thousand Three Hundred and Eighteen only) with 6 % interest from the 30th date of the award till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount



received by him earlier without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the appellant. The claimant is not entitled for interest

for the default period, if there is any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Commissioner of Workmen Compensation,
Madurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.D.SIVARAMAN, Advocate (SR-25659,SR-25658[F] dated 09/08/2021)

C.M.A. (MD)Nos.644 of 2013 and 1281 of 2015

06.08.2021

RD(31.08.2021) 5P 5C