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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 31.03.2022

JUDGMENT DELIVERED ON : 08.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.NO.2629 OF 2014

AND

C.M.P.NO.5224 OF 2022

V.Murali

... Appellant

Vs

1. P.Kumaresan

2. United India Insurance Co.Ltd.
No.134, Greams Road,
Chennai - 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the judgment and decree dated 22.07.2014 and made in W.C.No.414/2012 on the file of Deputy Commissioner of Labour-II, Chennai.

For Appellant : Mr.F.Terry Chella Raja
for Ms.M.Malar

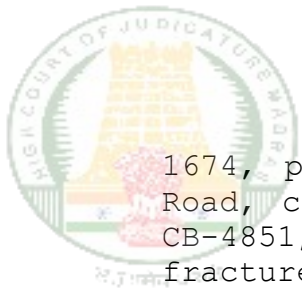
For Respondents : Mr.C.Paranthaman for R2

JUDGMENT

This civil miscellaneous appeal is filed by the injured claimant for enhancement of compensation against the award dated 22.07.2014 made in W.C.No.414 of 2012 by the Deputy Commissioner of Labour-II, Chennai.

2. The brief facts of the case is as follows:

On 07.05.2012, at about 16.45 hrs., when the appellant, who was employed as a driver under the 1st respondent/ owner of the auto, was driving the auto bearing registration No.TN-01-AQ-



1674, proceeded towards Alandur Road junction at Guindy Estate Road, collided with the motor cycle bearing registration TN-22-CB-4851, due to which, he sustained grievous injuries viz., fracture in right hip and multiple injuries all over the body. Initially, he took treatment in Government Royapettah Hospital, Chennai, and thereafter, he took further treatment as in-patient in Government General Hospital, Chennai, from 07.05.2012.

3. The appellant had filed a claim petition before the Deputy Commissioner of Labour-II, seeking compensation under the Workmen Compensation Act (hereinafter referred to as the 'W.C.Act'). On the side of the claimant, P.W.1 and P.W.2 were examined and exhibits Exs.P1 to P12 were marked. On the side of the 1st respondent, none appeared and no counter affidavit has been filed. On the side of the 2nd respondent, only Vakalat has been filed and none appeared on behalf of the 2nd respondent and no counter was filed and no witness was examined for the respondents.

4. After considering the submissions made on the side of the claimant and on perusing the documents, the trial Court, had awarded a sum of Rs.3,79,301/- (Rupees Three Lakhs Seventy Nine Thousand Three hundred and one only) as compensation to the claimant payable by the 2nd respondent/Insurance Company, within 30 days from the date of receipt of a copy of the award, in default, to pay interest at the rate of 12% per annum, after 30 days from the date of the accident.

5. Aggrieved by the award passed by the learned Deputy Commissioner, the appellant/claimant has filed the present appeal by raising the following substantial questions of law:

a) Whether the learned Deputy Commissioner of Labour-II is right in fixing the loss of earning capacity as 60%?

b) Whether the learned Deputy Commissioner of Labour-II is right in not fixing the earning capacity as 100%?

c) Whether the Deputy Commissioner of Labour-II is right in not awarding interest at the rate of 12% p.a. from the date of accident excluding 30 days from the date of accident under section 4(A) of the W.C. Act, while the award was passed on merits?

6. Learned counsel for the appellant submitted that the monthly wages fixed by the Commissioner as Rs.6,416/- is against the notification dated 18.01.2010 issued by the Central



Government which has fixed a sum of Rs.8,000/- per month as monthly wage of an employee. Learned counsel would further submit that Mr.C.Paranthaman, the learned counsel who appeared before the lower Court for the Insurance Company is now appearing for the 2nd respondent/ Insurance Company before this Court in the present appeal. Learned counsel for the appellant would further submit that though it is contended by the respondent Insurance Company that they have filed a petition to set aside the exparte award, no copy of the petition was given and no notice has been served on the appellant. He would further submit that the trial Court has fixed the monthly wage of the appellant/claimant as Rs.6,416/- as per G.O.2D No.54, Labour and Employment Department dated 16.10.2008, but failed to award as per the new provision under Section 4(1B) of W.C. Act, which has fixed the monthly wage of an employee as Rs.8,000/-. At the time of accident, the above said Central Government Notification was in force. Learned counsel would also submit that the interest for awarding 12% per annum, 30 days after the date of accident, is provided under Section 4(A) 3a of W.C. Act. Therefore, the learned counsel for the appellant would pray for enhancement of compensation and to pay arrears with interest at the rate of 12% p.a.

7. Learned counsel for the 2nd respondent/ Insurance Company would submit that as against the award passed by the learned Deputy Commissioner, the 2nd respondent has filed an application in I.A.No.264/2019 to set aside the exparte award on 06.08.2014 within 30 days of the award. Since the appeal has been filed before this Court, the learned Commissioner did not proceed further with the petition to set aside the exparte award. He would further submit that an opportunity has to be afforded to all the parties to adjudicate the issue in accordance with law and hence, prayed to remand the matter to the Deputy Commissioner of Labour. He would also submit that the learned Commissioner, fixing the monthly wage of the claimant as Rs.6,416/-, based on G.O.(2D) No.54, Labour and Employment Department dated 16.10.2008, is correct and there is no necessity to increase the monthly wage of the appellant/claimant. Learned counsel would further submit that P.W.2 doctor, who issued disability certificate, has not treated the claimant and the claimant also did not appear before the Medical Board and the appellant's plea to fix the loss of earning capacity from 60% to 100% is only a question of fact and not a question of law. Only if question of law is present, this Court can interfere with the award passed by the learned Commissioner. Further, the appellant has not surrendered the original driving license before the RTO and has not marked any document or letter to show that he has surrendered the original driving license. Hence, the plea of 100% of loss of earning



power does not arise. Hence, the learned counsel would pray for setting aside the exparte award and to remand the matter to the learned Deputy Commissioner.

8. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent/Insurance Company and perused the materials available on record.

9. This Appeal is filed seeking enhancement of compensation on the ground that the monthly wages fixed by the learned Commissioner is against the notification dated 18.01.2010 by the Central Government and to award interest at the rate of 12% per annum. The accident has occurred on 07.05.2012. On the said date, the notification issued by the Central Government is in force. Though the 2nd respondent seeks permission of this Court to set aside the exparte award and to remit the matter back to the learned Commissioner, the said contention is not viable as per Section 25A of W.C. Act, since it provides time limit for disposal of the cases relating to compensation within a period of three months and intimate the decision within the said period to the employee.

10. Taking into consideration of the fact that the accident happened after the notification issued by the Central Government dated 18.01.2010, wherein section 4 of W.C. Act has been amended and a new provision of 4(1B) was included, this Court is of the opinion that the compensation in respect of monthly wage of the claimant can be taken as Rs.8000/-. Though the learned counsel for the appellant would submit that the appellant is liable for interest at the rate of 12% per annum, this Court is of the opinion that interest of justice would be met, if the interest for arrears of payment is fixed at 9% per annum. Therefore, except increasing the amount of Rs.8,000/- instead of Rs.6,412/- in respect of monthly wage of the claimant and 9% interest instead of 12% in respect of arrears of payment, in all other aspects, the order passed by the Deputy Commissioner of Labour-II will hold good and the substantial questions of law are ordered accordingly.

11. The 2nd respondent Insurance Company is directed to pay a compensation of Rs.4,72,944/- ($8000 \times 60/100 \times 50/100 \times 197.06$) (Rupees Four Lakhs Seventy Two Thousand Nine Hundred and Twenty Two only), to the claimant, within a period of eight weeks from the date of receipt of a copy of this order, after adjusting the amount already paid, if any. The 2nd respondent Insurance Company shall pay interest for arrears of payment at the rate of 9% per annum, after 30 days from the date of the accident.



12. The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Deputy Commissioner of Labour-II,
Chennai.
2. The United India Insurance Co.Ltd.
No.134, Greaves Road,
Chennai - 600 006.
3. The Section Officer,
VR Section,
High Court, Chennai.

+1cc to M/s.M.Malar, Advocate, S.R.No.32881

+2ccs to Mr.C.Paranthaman, Advocate, S.R.No.32690

C.M.A.No.2629 of 2014

SMI (CO)
RLP (20/06/2022)