



C.M.A.No.1091 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1091 of 2020
and W.M.P.No.6910 of 2020

M/s. IFFCO-TOKIO General
Insurance Company Ltd.,
'IFFCO BHAVAN', IV floor,
No.128, Habibullah Road,
Chennai-600 017.

... Appellant/Respondent-II

Vs

1.A.Mohamed Ali
2.M.Ramesh Mari

... Respondent-I/Petitioner
... Respondent-II/Respondent-I

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Employees' Compensation Act, 1923 as against the Final Award 7th August, 2019 (Received on 08.11.2019), passed in E.C.No.523 of 2013, by the Learned Commissioner for Employees Compensation, (Joint Commissioner of Labour-II) At Chennai.

For Appellants ... Mr.J.Michael Visuvasam

For Respondents ... Ms.A.Subadra
for M/s.C.Richard Suresh Kumar [R1]
... No Appearance [R2]



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JUDGMENT

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Challenging the impugned Award dated 07.08.2019 passed by the Learned Commissioner for Employees Compensation, (Joint Commissioner of Labour-II), Chennai in E.C.No.523 of 2013, the Appellant-Insurance Company has filed the present Appeal.

2. It is the case of the claimant that on 04.10.2013, at about 9 A.M., when the claimant was discharging his duty as a cleaner under the first respondent by loading the materials in the lorry bearing regn.No.TN-49-AJ-2859 the claimant accidentally fell down from the vehicle while discharging his working resulting in sustaining of grievous injuries for which the claimant was hospitalized. Since he had suffered disability which resulted in the claimant not able to eke out his livelihood in the manner as he was earlier doing, the claim petition was filed before the Commissioner for Workmen's Compensation claiming compensation.

3. Learned counsel appearing for the Appellant-Insurance Company



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submits that except for self assertion of the claimant that he was employed as a cleaner under the first respondent no other evidence either oral or documentary has been placed before the Commissioner to prove the employment of the claimant to the first respondent. It is the further submission of the learned counsel that notice on claiming as provided under Section 10 of the Employee's Compensation Act has not been provided either by the claimant or the first respondent to the Insurance Company. Learned counsel for the appellant further submits that the findings recorded by the Commissioner that no evidence was placed by the appellant to prove that the injuries sustained were in the course of the employment. Without considering the evidence of R.W.1 & R.W.2 and Ex.R-1 to Ex.R-5 and non appreciation of the same renders the award unsustainable. It is further submitted that merely relying on Ex.P-1, the FIR and without considering the possibility of non involvement of the vehicle alleged to have been involved in the accident finding rendered by the Commissioner is wholly perverse. The age of the claimant has also been erroneously determined by the Commissioner and the compensation is on the higher side which requires re-consideration. Further, the medical records have not been properly considered while fixing the disability and therefore the



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award passed by the Commissioner requires interference.

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4. Per Contra, learned counsel appearing for the first respondent/claimant submits that after considering the oral and documentary evidences as also the nature of injuries suffered by the claimant, the Commissioner has rightly fixed the quantum of compensation by fixing the disability at 45% which does not require any interference. Accordingly, he prayed for dismissal of the Appeal.

5. This Court gave its anxious consideration to the learned counsel appearing for the appellant-Insurance Company and the first respondent/claimant and perused the materials available on record.

6. A perusal of the order impugned herein passed by the Commissioner reveals that P.W.1 had made categorical assertion that he was employed under the first respondent and that he was earning a sum of Rs.10,000/- per month and that the accident in the manner as has been spoken to in Ex.P-1 i.e., FIR. A perusal of Ex.P-1 reveals that the claimant had suffered the injuries in the



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course of his employment and that the accident relating to the injuries suffered by the claimant was given as complaint by one Abdul Rahman who appeared before the law enforcing agency and had registered the complaint based on which the Sub-Inspector of Police had taken up investigation. Though certain documents in the form of Ex.R-1 to Ex.R-5 have been filed by the appellant to disprove the accident alleged to have taken place, however, the said documents does not in any manner disprove the accident in which the claimant is alleged to have suffered injuries. Merely filing contra documents without disproving the complaint registered under Ex.P-1, the stand of the Insurance Company with regard to the allegation regarding the accident being doubtful cannot be sustained. The Commissioner has appreciated the materials placed before him with respect to the accident and the injuries suffered by the claimant in the course of his employment under the first respondent and had come to a conclusion that the claimant as suffered the injuries in the course of his employment and thereby he is entitled to claim compensation under the Workmens Compensation Act. The said finding cannot be interfered with in the absence of any documents to disprove such finding.



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7. Insofar as the issue relating to the percentage of liability fixed is concerned, a perusal of the evidence P.W.2, the doctor who had issued Ex.P-8, the disability certificate reveals that while fixing the disability with regard to the various injuries suffered by the claimant, the doctor in his opinion has assessed the disability at around 45%. The Commissioner has adopted the said opinion as it is without considering the nature of injuries suffered. When the Tribunal decides to accept the findings with regard to the percentage of disability, the reasons behind such acceptance must be clearly spelt out however, there are no cogent and evidencing reasons for the Commissioner to accept the disability at 45%. The disability for the various injuries suffered by the claimant has been fixed at 20% & 20% but the overall disability has been fixed at 45%. This Court is not in agreement with fixing the disability at 45% with the fixation of percentage of disability insofar as the suffered has been fixed as 20% and 20% totalling 40%. Considering the injuries suffered by the claimant and its impact on the everyday activity as well as the livelihood of the claimant this Court is of the opinion that the permanent disability could be fixed at 35% which would meet the ends of justice and accordingly, this Court awards a sum of Rs.2,84,660/- ($60/100 * 169.44 * \text{Rs.}8000/- * 35\%$) as



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compensation to the first respondent/claimant.

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8. The appeal is partly allowed and the impugned Award of the Tribunal is modified by reducing the compensation amount from **Rs.3,65,990/- to Rs.2,84,660/-**. The Appellant-Insurance Company is directed to deposit the modified amount amount to the credit of E.C.No.523 of 2013 along with interest at the rate of 12% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of eight (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the 1st Respondent/claimant through RTGS within a period of two weeks thereafter. The 1st Respondent/claimant is directed to pay the necessary Court fee for the above said compensation amount. The Tribunal below shall disburse the compensation enhanced by this Court upon proof of payment of Court fee is by the claimant. If any amount deposited by the appellant/Insurance Company before the Tribunal, the Insurance Company is permitted to withdraw the same by making appropriate application before the Tribunal. However, there shall be



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no order as to costs in the present appeal. Consequently, the connected
Miscellaneous Petitions are closed.

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Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

To

1. Learned Commissioner for Employees Compensation,
(Joint Commissioner of Labour-II), Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.

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M.DHANDAPANI, J

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