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C.M.A.Nos.138, 139, 1844 and 1933 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6/11/2024

C O R A M

THE HONOURABLE Mr.JUSTICE **M.DHANDAPANI**

Civil Miscellaneous Appeal Nos.138, 139, 1844 and 1933 of 2007

The National Insurance Company Limited
751 Anna Salai
Chennai 600 002.

...

Appellant
in C.M.A.Nos.
138 and 139 of 2007

K. Sivaraj

...

Appellant
in C.M.A.No.1844 of 2007

C. Manikandan

...

Appellant
in C.M.A.No.1933 of 2007

Vs

1. K. Sivaraj

2. G. Jayaraman

...

Respondents
in C.M.A.Nos.
138 and 139 of 2007

1. G. Jayaraman

2. The National Insurance Company Ltd
751 Anna Salai
Chennai 600 002.

...

Respondents
in C.M.A.Nos.1844 and 1933 of 2007



C.M.A.Nos.138, 139, 1844 and 1933 of 2007

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Common Prayer: Appeals filed under Section 30 of the Workmen's Compensation Act, 1923 against the Award dated 30/10/2006, 23/10/2006, 30/10/2006 and 23/10/2006 made in W.C.Nos.117, 116, 117 and 116 of 2004 on the file of the Commissioner for Workmen's Compensation Court – 1, Chennai 600 006.

For appellant ... Mr.S.Vadivel
(in C.M.A.Nos.138 and 139 of 2007)

Mrs.A.Subadra
for Mr.A.Shanmugaraj
for R.1.
(in C.M.A.Nos.1844 and 1933 of 2007)

For respondents ... Mrs.A.Subadra
for Mr.A.Shanmugaraj
for R.1.
(in C.M.A.Nos.138 and 139 of 2007)

Mr.S.Vadivel
(in C.M.A.Nos.1844 and 1933 of 2007)

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COMMON JUDGMENT

Civil Miscellaneous Appeal Nos.138 and 139 have been filed by the Insurance Company against the award dated 30/10/2006 and 23/10/2006 passed in W.C.Nos.117 and 116 of 2004, respectively, by the Deputy



C.M.A.Nos.138, 139, 1844 and 1933 of 2007

Commissioner for Labour – I (Commissioner for Workmen's Compensation – I), Chennai.

2. Civil Miscellaneous Appeal Nos.1844 and 1933 of 2007 have been filed by the claimants against the award dated 30/10/2006 and 23/10/2006, respectively passed in W.C.Nos.117 and 116 of 2004 by the Deputy Commissioner for Labour – I (Commissioner for Workmen's Compensation – I), Chennai.

3. The case of the claimants are as follows:-

On 2/5/2002, at about 9.00 a.m., when the driver (appellant in C.M.A.No.1844 of 2007) was driving a van bearing Registration No.TN-23-A-8987 along with a cleaner (appellant in 1933 of 2007) in NH-47 Sangothipalayam, Tirupur Taluk, Coimbatore District, it collided with Tamil Nadu State Transport Corporation Ltd., bearing Registration No.TN-33-N-1529, thereby the driver of the van has sustained fracture and dislocation in right hip, right foot, contusion in right chest and the cleaner has sustained dislocation in left knee, crush injury in right thigh, broken glass leads to severe injuries over head and face injuries and multiple injuries all over the



body. Both took treatment as in patient at United Appollo Hospital from 2/5/2002 to 3/5/2002 and then continuing their treatment at Puthur Bone Setting Hospital. They had filed claim petitions before the Deputy Commissioner of Labour – 1, Teynampet, Chennai, claiming a sum of Rs.5,00,000/- and Rs.4,00,000/-, respectively as compensation.

4. Before the labour Court, during trial, in order to prove their cases, claimants have examined P.Ws.1 and 2 and marked Exs.P.1 to P.10. On the side of the Insurance Company, R.W.1 was examined and marked Exs.M.1 to M.3.

5. After analyzing the oral and documentary evidences and considering the pleadings made by both parties, the labour Court has awarded a sum of Rs.1,00,608/- and Rs.75,187/- respectively, as compensation to the claimants.

6. Not being satisfied with the quantum of compensation awarded by the labour Court, the claimants had filed C.M.A.Nos.1844 and 1933 of 2007 for enhancement of compensation, and for questioning the award, Insurance Company has filed C.M.A.Nos.138 and 139 of 2007.



7. At the time of admission, the following substantial questions of

law have been framed by this Court in the appeals filed by the Insurance Company, viz., C.M.A.Nos.139 and 139 of 2007.

“1. Whether the Deputy Commissioner of Labour – 1, Chennai 6 can fix the percentage of loss of earning capacity of the claimant without seeing the claimant at all?

2. Whether the Deputy Commissioner of Labour – 1, Chennai 6 is right in fixing the loss of earning capacity of the claimant by giving credence to the percentage of physical disability assessed by the Doctor on the side of the claimant when admittedly there was evidence available on record that the injuries suffered by the claimant were cured well and also no scar was found on the applicant?

3. Whether the Deputy Commissioner of Labour – 1, Chennai 6 has considered Ex.A.9 and Ex.R.1 properly?



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C.M.A.Nos.138, 139, 1844 and 1933 of 2007

4. Whether the Deputy Commissioner of Labour -1, Chennai 6 has power to award interest against the appellant?"

8. Heard Ms.A.Subadra, learned counsel for the claimants and Mr.S.Vadivel for the Insurance Company.

9. The learned counsel appearing for the Insurance Company submitted that the claimants did not sustain any fracture and it is only a dislocation. In the absence of any proof, the labour Court had fixed the loss of earning capacity of the claimants by fixing the disability at 30% and 20%, respectively, which is highly excessive and hence, prays for appropriate orders.

10. Perused the materials available on record.

11. The factum of the accident and injuries sustained by the claimants are not in dispute. So also the negligence is also not questioned and the issue is only with regard to the quantum of compensation. Therefore, this Court is not venturing into the aspect of negligence.



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12. The main contention of the learned counsel for the Insurance Company is that the injuries suffered by the claimants have been cured and therefore, there is no disability and the total compensation awarded is therefore, excessive. There is no dispute about the fact that the claimants have sustained injuries. There is also no dispute about the fact that there are no visible scars on the claimants. It is to be pointed out that disability is not relatable to scars or continuation of injuries, but the ability of an individual to discharge the work in the same manner as he was discharging prior to the sustaining of the said injuries. The physical disability has been assessed by the Doctor at 30% and 20% respectively, based on which the authority has fixed the compensation. It is the consistent ratio of the Courts that it is only the experts who can speak about the percentage of disability and not for the Courts to decide on the exact percentage of disability suffered by an individual.

13. Further the Court on mere viewing of the injured cannot come to a conclusion as to the disability suffered by him. When the expert in the medical field viz., Doctor., has examined the claimants and fixed the disability at a particular percentage, it cannot be said that the disability

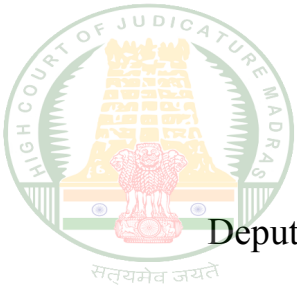


assessed by the Doctor is excessive. That apart, there arises no necessity for the authority to view a person in persons to fix the disability. Therefore, disability assessed by the Doctor does not require any interference and accordingly, substantial questions of law Nos.1 and 2 are answered against the Insurance Company.

14. Once, this Court has come to the conclusion that percentage of disability fixed by the Doctor is just and reasonable which has been done by the authority, on a careful consideration of all the materials including Exs.A.9 and R.1, there is no contra evidence with regard to the disability suffered.

15. The substantial question of law No.3 framed relating to proper consideration of Exs.A.9 and R.1 is wholly misconceived and accordingly, this substantial question of law is also answered against the Insurance Company.

16. In so far as the substantial question of law No.4 is concerned, it is to be noted that award of interest is within the discretion of the authority and so long as the same is not exorbitant or excessive, interest awarded by the



C.M.A.Nos.138, 139, 1844 and 1933 of 2007

Deputy Commissioner of Labour – I (Commissioner for Workmen's Compensation – I), Chennai, cannot be said to be without power and the same is sustained. Thus, the substantial question of law No.4 is also answered against the appellant Insurance Company.

17. With regard to the appeals filed by the claimants, seeking enhancement, this Court is of the view that the authority after considering the oral and documentary evidence and also taking into consideration the injuries sustained by the claimants has awarded compensation to the tune of Rs.1,00,608/- and Rs.75,187/- respectively, which are quite reasonable and also just compensation and the same needs no interference.

18. In the result, Civil Miscellaneous Appeals are dismissed. No costs.

6/11/2024

mvs.

Index : Yes / No

Neutral Citation: Yes/No



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C.M.A.Nos.138, 139, 1844 and 1933 of 2007

M.DHANDAPANI,J

mvs.

1. The Commissioner for Workmen's Compensation Court – 1,
Chennai 600 006.
2. The National Insurance Company Ltd
751 Anna Salai
Chennai 600 002.

C.M.A.Nos.138, 139, 1844 and 1933 of 2007

6/11/2024



WEB COPY



C.M.A.Nos.138, 139, 1844 and 1933 of 2007



C.M.A.Nos.138, 139, 1844 and 1933 of 2007

C.M.A.Nos.138, 139, 1844 and 1933 of 2007

M.DHANDAPANI,J

Today, this matter has come up under the caption “For Being Mentioned”, at the instance of this Court.

2. It is brought to the notice of this Court that in the cause title, name of first respondent in C.M.A.No.139 of 2007 has not been typed.

3. This Court perused the order dated 6/11/2024 made in C.M.A.Nos.138, 139, 1844 and 1933 of 2007 and finds that in the cause title, name of the first respondent in C.M.A.No.139 of 2007 has not been typed.

4. Accordingly, in the cause title, name of the first respondent in C.M.A.No.139 of 2007 to be inserted as follows:-

- | | | |
|------------------|-----|---|
| 1. K. Sivaraj | ... | First respondent in C.M.A.No.138 of 2007 |
| 1. C. Manikandan | ... | First respondent in C.M.A.No.139 of 2007 |
| 2. G Jayaraman | ... | Second respondent in C.M.A.Nos. 138 and 139 of 2007 |



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C.M.A.Nos.138, 139, 1844 and 1933 of 2007

M.DHANDAPANI,J

mvs.

5. Registry is directed to carry out the aforesaid correction and issue fresh order copy to the parties.

7/7/2025

mvs.

C.M.A.Nos.138, 139,
b1844 and 1933 of 2007