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C.M.A.No.747 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.747 of 2023

and

C.M.P.No.8360 of 2023

A.Mani

... Appellant

Vs.

E.P.Francis (Died)

1. National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai 600 002.

2. Vipin Francis

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923 against the decree and judgment dated 20.11.2017 made in W.C.No.508 of 2012, on the file of Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R1 : Mr.S.Vadivel

For R2 : M/S.Deepa Hari Govind



JUDGEMENT

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This Civil Miscellaneous Appeal has been filed by the claimant, challenging the order dated 20.11.2017 passed by Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II), Chennai made in W.C.No.508 of 2012.

2. On 11.12.2010 at about 15.30 hours, the appellant/claimant was driving a vehicle viz., lorry bearing Reg.No.KL-08-AS-6746, within the jurisdiction of Thenmala Police Station, Kollam District, Kerala, the appellant/claimant met with an accident and sustained grievous injuries all over his body. Hence, the appellant made a claim before the Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II), seeking a sum of Rs.10,00,000/- as compensation.

3. On consideration of oral and documentary evidence, the Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II) has awarded a sum of Rs.4,83,915/- towards compensation. Being not satisfied with the same, the appellant/claimant has preferred the present appeal.

4. The learned counsel for the appellant submitted that, at the time of



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accident, the appellant was working as a Driver, and earning a sum of Rs.10,000/- per month. However, without considering the same, the Deputy Commissioner of Labour-II had fixed the notional income of the appellant at a sum of Rs.5,966/-, which is very meager, and the same needs to be modified by this Court. Further, he submitted that, the Doctor assessed functional disability at 75%, however, while awarding the compensation to the appellant, the Tribunal has taken functional disability at 65%. Hence, he requested this Court to fix the functional disability at 100%, since the appellant has lost his earning capacity, and the same needs to be re-determined by this Court. Accordingly, he prays for appropriate modification and enhancement in favour of the appellant.

5. The learned counsel for the first respondent fairly agreed to fix the notional income of the appellant/claimant at Rs.8,000/-, which is just and reasonable. Further, he submitted that instead of taking functional disability at 100%, this Court may take functional disability at 75% as assessed by the Doctor.

6. Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the first and second respondents and perused the materials available on record.



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8. This Court vide order dated 26.02.2024, directed the claimant/appellant to appear before this Court to ascertain his present status. Pursuant to the same, today, the claimant appeared before this Court and reported that there is no improvement in his disability. Therefore, taking into consideration of the nature of injuries and disability sustained by the claimant, this Court is inclined to fix the notional monthly income of the deceased at Rs.8,000/- and functional disability at 75% and with regard to all other aspects, the order of the Deputy Commissioner of Labour II stands confirmed. Hence, the “loss of income” of the claimant is calculated as follows:-

$$60/100 \times \text{Rs.}8,000 \times 207.98 \times (75/100) = \text{Rs.}7,48,728/-.$$



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9. In the result, the appeal is partly allowed. The first respondent/Insurance Company is directed to deposit the entire compensation amount of **Rs.7,48,728/-** less the amount if already paid, which shall carry interest at the rate of **12%** per annum as per the Workmen's Compensation Act 1923 from the date of claim petition till the date of deposit before the Deputy Commissioner of Labour-II, Chennai, within a period of six weeks from the date of receipt of a copy of this order and on such deposit, the claimant is entitled to withdraw the same in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

11.03.2024

Index : Yes / No

NCC : Yes / No

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To

1. The Deputy Commissioner of Labour-II, Chennai.

2. The Section Officer,
V.R. Section,
High Court, Madras.

Krishnan Ramasamy,J.,



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