



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM:

THE HON'BLE MR. JUSTICE K. RAJASEKAR

C.M.A.No.3453 of 2021

D. Rajendran

... Appellant

..VS..

1. N. Selvakumar

2. The Divisional Manager

New India Assurance

Company Limited,

No.29, Ram Complex, 1st floor,

Paramathi Road, Namakkal Town.

...

Respondents

Appeal filed under Section 30 of the Workmen's Compensation Act, against the award, dated 19.02.2021, made in E.C.No.363 of 2018 on the file of the Commissioner for Workmen's Compensation, Coonoor / Commissioner for Labour, Coonoor.

For Appellant : Mr.C.Thangaraju

For Respondents : R-1 – No Appearance,
M/s.A.Salomi for R-2



WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 19.02.2021, made in E.C.No.363 of 2018 on the file of the Commissioner for Workmen's Compensation, Coonoor / Commissioner for Labour, Coonoor, which is a claim filed under the Employees Compensation Act, 1923.

2. The claimant, D.Rajendran, who was a driver, by profession, suffered left hand fracture and he claimed compensation on the ground that he suffered injury during the course of employment. The Tribunal, taking the age of the workman as 30 and adopting the factor 207.98 and taking the monthly income at Rs.8,000/-, has calculated the loss of earning capacity as well taking the physical disability as equivalent to the functional disability.

3. The said finding of the Tribunal is challenged by the claimant on the ground that the Tribunal did not even take the percentage of disability



as assessed by the Doctor i.e., 40% and without any basis and valid reason, the Tribunal has fixed the loss of earning capacity as well as the physical disability at 37%.

4. The learned counsel for the second respondent would submit that the Tribunal has rightly fixed the functional disability at 37% (as the disability) as assessed by the Doctor is not for the whole body, but it was only with reference to the particular limb.

5. The issue that has to be considered in this appeal is the impact of the physical disability upon the functional ability, de hors whether it is with reference to the particular limb or whether it is with reference to the whole body. It is not in dispute that the workman had been the Driver at the time of accident and therefore, driving would be an impossibility if the fracture in the left hand is taken into account and when the disability is stated to be 37%, certainly it would be a partial permanent disablement affecting his earning capacity. More over, the claimant has also accepted his disability as 37% before the Tribunal and hence the Tribunal has



correctly awarded 37% functional disability for the particular limb.

6. Since the claimant has not properly proved his income, the monthly income has been taken by the Tribunal at Rs.8,000/- per month. as per the notification issued by Central Government by invoking Section 4(1)B of the Employees Compensation Act. The amount awarded under other heads seem to be reasonable, therefore, the same shall stand confirmed and the Appeal has no merits and thus, the Civil Miscellaneous Appeal is dismissed. No costs.

7. The 2nd / Insurance Company is directed to deposit the amount of compensation, as awarded by the Tribunal, along with interest at 12% per annum (as ordered by the Claims Tribunal), from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment to the credit of E.C.No.363 of 2018 on the file of the Commissioner for



Workmen's Compensation, Coonoor/Commissioner for Labour, Coonoor.

WEB COPY

On such deposit being made, the claimant / appellant herein is permitted to withdraw the same.

02.02.2024

Index : Yes / No

Web : Yes / No

dpq

To

1. The Commissioner for Workmen's Compensation, Coonoor /
Commissioner for Labour, Coonoor.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104



WEB COPY



6

K. RAJASEKAR, J.,

dpq

C.M.A.No.3453 of 2021

02.02.2024