



C.M.A.(MD)No.1622 of 2010

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Dated: 06.08.2024

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

C.M.A.(MD)No.1622 of 2010

D.Babu

.. Applicant/Appellant

Vs.

1. Susila David
2. The Divisional Manager
Royal Sundaran Alliance Insurance Co Ltd.,
46, Whites Road,
Chennai

..Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 to allow the appeal and enhance the award passed in W.C. No.414 of 2002 dated 28.04.2004 on the file of the Commissioner for Workmen's Compensation, Madurai

For Appellant : Mr.C.Godwin

For R2 : Mr.S.Srinivasa Raghavan

JUDGMENT

The appellant has preferred the instant appeal seeking enhancement of compensation in the award passed in W.C. No.414 of 2002 dated 28.04.2004 on the file of the Commissioner for Workmen's Compensation, Madurai.



C.M.A. (MD) No. 1622 of 2010

WEB COPY

2. The appellant has filed a claim petition under the Workmen's Compensation Act, stating that on 07.09.2002, while he was driving the vehicle belonging to the first respondent herein, under whom he was employed as a car driver, collided with the oncoming car, which was driven in a rash and negligent manner; that as a result of collusion, the appellant sustained multiple grievous injuries, namely, dislocation of the right hip, intra- scapular fracture of the neck of the right femur, deep cut injury over the right thigh, cut injury over the head and other injuries; and that he had taken treatment as inpatient in the hospital from 08.09.2002 to 20.09.2002 and continued his treatment as outpatient.

3. The first respondent though was represented by the Counsel did not file any counter.

4. The second respondent filed counter stating that he was not employed under the first respondent and that the averment that he was earning Rs. 4500/- per month was false and that he did not have any valid licence.



C.M.A.(MD)No.1622 of 2010

5. The appellant examined himself as P.W.1 and the Doctor as P.W.2. He marked exhibits Ex.A1 to A4 and his medical case sheet as Ex.C.1.

6. The Commissioner under the Workmen's Compensation Act held that the appellant was employed under the first respondent as driver and that he had sustained injuries in the accident that arose during the course of his employment. The Tribunal also fixed wages at Rs.3,082/- and assessed the loss of earning capacity as 65% based on the report of the Doctor.

7. The learned counsel appearing for the appellant would submit that the Commissioner ought to have fixed loss of earning capacity at 70% instead of 65%; that the Doctor has certified that the appellant suffered partial permanent disability at 70% and that the appellant is entitled for medical expenses for continuous treatment taken by him.

8. The learned counsel appearing for the second respondent/Insurance company submitted that the accident took place in the year 2002; and that only by the amendment made in the year 2009 enabled the employee to claim actual reimbursement for



C.M.A.(MD)No.1622 of 2010

medical expenses and hence the appellant would not be entitled for reimbursement for medical expenses.

9. This Court has carefully considered the rival submissions.

The appeal raises the following substantial questions of law :

“i) Whether the Court below is right in holding that the appellant has sustained 65% disability only since the Doctor has issued the disability certificate at 70%?

ii) Whether the Court below is right in ignoring the fact that the appellant has to undergo his replacement surgery for every five years while deciding the disability and awarding compensation?

iii) Whether the award of the Court below is just and reasonable in having regard to the functional disability sustained by the appellant?”



C.M.A.(MD)No.1622 of 2010

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10. As regards the second substantial question of law, it is seen that before The Workmen's Compensation (Amendment) Act 2009, the employee was not entitled for any reimbursement of the medical expenditure. The claim of the appellant is in respect of accident that took place in the year 2002. As per law applicable on the date of accident, the appellant is not entitled for any reimbursement of the expenditure incurred for his medical treatment. Therefore, the Tribunal was right in not awarding any compensation under the head of reimbursement for medical expenses.

11. As regards the first substantial question of law, it is admitted that the Doctor had assessed the disability at 70%. P.W.2 had assessed the disability at 70% as partial permanent disability and he has issued certificate Ex.A.14. The evidence of the doctor suggests that the employee suffered 70% functional disability. Under such circumstances, the Commissioner had not given any reasons to assess the loss of earning capacity at 65%. In the absence of any valid reasons to reduce the assessment made by Doctor, this Court is of the view that the findings of the Commissioner fixing loss of earning capacity as 65% is erroneous. Hence, this Court is of the view that the loss of earning capacity can be fixed at 70%. The



C.M.A.(MD)No.1622 of 2010

appellant has not made out any case for enhancement of compensation amount under any other head. Hence, the compensation payable to the appellant has to be worked out as under:

S.No	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted
1	Wages	Rs.3,082/-	Rs.3,082/-	confirmed
2	Age and Factor	36 years 194.64	-	
3	Loss of earning capacity	65%	70%	Enhanced
4	Compensation Payable	Rs.2,33,953/-	Rs.2,51,949/- Rounded to Rs.2,52,000/-	Enhanced

12. Thus, the appellant is entitled to the enhanced compensation together with accrued interest. The second respondent shall deposit the enhanced compensation amount within a period of four weeks from the date of a receipt of copy of this judgment. On such deposit, the appellant is entitled to withdraw the same by filling appropriate application.



C.M.A.(MD)No.1622 of 2010

WEB COPY

13. In the result, the Civil Miscellaneous Appeal stands partly allowed. No costs.

06.08.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
aav

To:

1. The Commissioner for Workmen's Compensation, Madurai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.1622 of 2010

SUNDER MOHAN,J.

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C.M.A.(MD)No.1622 of 2010

06.08.2024