



C.M.A(MD)No.542 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.03.2024

PRONOUNCED ON:.04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.542 of 2019

and

C.M.P.(MD)No.6387 of 2019

Rajasekaran : Appellant/Respondent

Vs.

A.Selvi Ananthi : Respondent/Petitioner

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, against the award passed by the Deputy Commissioner of Labours, Trichy District in W.C.No.5 of 2016, dated 01.10.2018.

For Appellant : Mr.B.Prasanna Vinodh

For Respondent : Mr.J.Anand Kumar



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JUDGMENT

This Civil Miscellaneous Appeal is directed against the order passed in W.C.No.5 of 2016, dated 01.10.2018, on the file of the Employee's Compensation Commissioner / Deputy Commissioner of Labour, Trichy.

2. The case of the claimant is that she was working as a Box Maker in the respondent's concern, that on 18.08.2015 at about 03.30p.m., when the claimant was doing her allocated works, the factory Manager directed her to clean the printing machine of the factory, that the printing machine was in running condition at that time and without due care and attention, the factory Manager directed to clean the running machine and also avoided to stop the machine, that the petitioner, as per the directions of the factory Manager, attempted to clean the printing machine and at that time, her hands were pulled by the printing machine and crushed therein, that the petitioner sustained severe crush injuries in her both hands, that she was immediately taken to Front-Line Private Hospital, Trichy, that after first aid treatment, she was admitted in Olympia Hospital and



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treatment by the respondent management, that there is no physical disability or loss of earning capacity due to the alleged accident and that therefore, the respondent is not liable for the claim and the petitioner is not entitled to get any compensation under the Employee's Compensation Act.

4. During enquiry, the claimant has examined herself as P.W.1 and the Medical Officer – Thiru.Rajendran as P.W.2 and exhibited 12 documents as Exs.P.1 to P.12. The respondent has examined its Proprietor Thiru.Rajasekaran as R.W.1 and the machine operator of the respondent Thiru.Karthikeyan as R.W.2 and exhibited three documents as Exs.R.1 to R.3. The learned Employee's Commissioner, on considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned order dated 01.10.2018, by holding that the accident was occurred in the course of her employment as a worker in the respondent's concern and fixing the loss of earning capacity at 45%, directed the respondent concern to pay compensation of Rs.5,61,134/- with interest of 12% from the date of accident till the date of payment. Aggrieved by the impugned order, the respondent has preferred the present appeal.



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5. The Substantial Questions of Law that arise for consideration in the present Civil Miscellaneous Appeal are as follows:

(1) Whether the Tribunal erred in fixing the loss of earning capacity at 45% by only taking note of the disability fixed at 51% by P.W.2 and by not taking into account Schedule-I to the Employee's Compensation Act?

(2) Whether the Tribunal erred in fixing the monthly income at Rs.8,000/- without considering the fact that the claimant herself has stated that she was getting only Rs.4,500/- p.m., and in the absence of any evidence to prove the monthly income of the claimant?

6. It is pertinent to note that the appellant/respondent has only disputed the disability percentage fixed by P.W.2 and the consequent fixing of loss of earning capacity by the Tribunal and that the quantum of monthly salary fixed by the Tribunal in the absence of any evidence and more importantly, the claimant herself has stated that she was only getting Rs.4,500/-p.m. It is evident from Ex.P.5 discharge summary issued by the Olympia Hospital and Research Centre, they have found the following injuries at the time of admitting the claimant:



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7. It is also evident from the records that after the first aid treatment at Front-Line Private Hospital, Trichy, the claimant was admitted at Olympia Hospital and Research Centre on 18.08.2015 and was discharged on 02.09.2015 and again she was admitted on 03.09.2015 and was discharged on 14.09.2015 and thereafter she was again admitted on 06.11.2015 and discharged on 07.11.2015. Admittedly, the claimant has not chosen to examine the Doctors, who had treated her at Olympia Hospital and Research Centre, but chosen to examine P.W.2 who has issued the disability certificate under Ex.P.11. In Ex.P.11 – disability certificate, P.W.2 has observed that amputated Index finger of left hand, right hand – shortening of middle finger and loss of function and loss of phalanx and clubbing of ring and little finger – loss of function. P.W.2 has fixed the partial permanent disability at right hand at 40% and for the left hand total permanent disability at 11%. The Tribunal, considering the above finding and the total disability fixed at 58% by P.W.2, has fixed the loss of earning power at 45%.

8. As rightly contended by the learned Counsel for the appellant/respondent, the Schedule -I to the Employee's Compensation



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Act for loss of four fingers of one hand, percentage of loss of earning capacity is shown to be 50% and loss of three fingers of one hand as 30% and loss of two fingers of one hand at 20%. As per Schedule -I, for loss of phalanx of index finger, percentage is shown as 11.

9. As already pointed out, according to P.W.2, there was amputation of two phalanx of left hand index finger and for the right hand, there was shortening of middle finger, loss of all phalanx in the right finger and loss of phalanx in the little finger. As rightly contended by the learned Counsel for the appellant, even assuming that there is a loss of three fingers of right hand, even then percentage of loss of earning capacity can only be 30%. But admittedly, there was no amputation of three fingers of the right hand of the claimant. Considering the above, the partial permanent disability fixed at 40% and the consequent loss of earning capacity fixed at 45% by the Tribunal are not only improper, but not in accordance with the Schedule to the Employee's Compensation Act.

10. No doubt, the disability percentage assessed by the Medical Officer must be taken into consideration for fixing the loss of earning



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capacity. The disability assessed by the Doctors and the loss of earning capacity to be fixed by the competent authority must be in commensuration with the disability percentage. No doubt, the Doctors are not competent to assess the loss of earning capacity. The Tribunal, while taking into account the disability fixed by the Medical Officer, has to decide the loss of earning capacity with reference to Schedule -I to the Employee's Compensation Act.

11. In the present case, as rightly contended by the learned Counsel for the appellant, the Tribunal without referring to Schedule-I, by taking note of the partial permanent disability assessed at 41% for the right hand and permanent disability at 11% without any basis has fixed the loss of earning capacity at 45% and as such, the same cannot be sustained. Considering the above facts and circumstances and taking note of Schedule-I to the Employee's Compensation Act along with the disability assessed by P.W.2, this Court fixes the loss of earning capacity at 35%.

12. Now turning to the monthly salary fixed by the Tribunal, it is the specific contention of the appellant that the claimant herself in her claim petition has specifically stated that she was getting monthly salary



13. The learned Commissioner, invoking the Minimum Wages Act, taken the basic salary at Rs.3,600/-, D.A. at Rs.4,575/- totalling 175/-, but taking note of the amended Employees Compensation has fixed the upper limit of Rs.8,000/- as monthly salary. No doubt, claimant herself in her claim petition as well as in her evidence, has stated that she was getting monthly salary of Rs.4,500/- from the respondent. The Employers including the respondent are duty bound to pay the salary not less than the salary provided under the Minimum Wages Act. It is pertinent to note that paying salary less than the minimum wages is illegal and is an offence attracting the punishment of imprisonment and penalty. Since the respondent has committed illegality in paying the less salary than the minimum wages, he cannot be allowed to take the advantage of the same for computing the compensation.

14. It is pertinent to note that if any workman is unable to establish correct salary with acceptable evidence, then the Tribunal is duty bound



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to adopt the minimum wages as notified by the Central Government under Section 4(1)(B) of the Act and the Employee's Compensation Act, being a welfare legislation, the compensation is to be calculated by adopting the minimum wages as notified by the Central Government. Considering the above, the monthly salary fixed by the Tribunal at Rs. 8,000/- cannot be found fault with.

15. The Tribunal, taking note of the evidence available on record, has fixed the age of the claimant as 26 years. The appellant/respondent has not specifically disputed the said factum. Considering the above, the compensation would be Rs.3,61,670/-($60/100 \times 8000 \times 215.28 \times 35/100$). The Tribunal has rightly granted medical expenses at Rs.96,130/-. Hence, the claimant is entitled to get total compensation of Rs.4,57,800/-. Considering the other facts and circumstances, this Court is of the view that the parties are to be directed to bear their own costs. The above Substantial Questions of Law are answered accordingly.

16. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is reduced from 5,61,134/- to Rs.4,57,800/-. The petitioner is entitled to receive the



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entire modified amount with interest at the rate of 12% p.a., and the appellant is also entitled to withdraw the balance amount. The parties are directed to bear their own costs. Consequently, the connected Miscellaneous Petition is closed.

04.06.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

- 1.The Deputy Commissioner of Labours,
Trichy District.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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