



C.M.A.(MD).No.296 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.12.2023

PRONOUNCED ON : 03.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.296 of 2017

and

C.M.P.(MD)No.3509 of 2017

Cholamandalam M.S.General Insurance Co. Ltd.,
Nagercoil,
Kanyakumari District.

... Appellant

Vs.

1.S.Justinraj
2.F.Michaelraj

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, to set aside the award dated 30.04.2015 made in W.C.No.1 of 2011 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli.

For Appellant	: Mr.S.Srinivasa Raghavan
For 2 nd Respondent	: Mr.S.C.Herold Singh
For 1 st Respondent	: No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the second respondent Insurance Company challenging the award passed by the Commissioner of Workmen's Compensation, (Deputy Commissioner of Labour), at Tirunelveli in W.C.No.1 of 2011 on 30.04.2015.

2.The applicant workman who was employed by the first respondent sustained injuries in an accident which occurred on 03.01.2010 in the course of his employment. The applicant was working as a driver under the first respondent. The injured was earning a salary of Rs.7,000/- per month and Rs.30/- as daily batta. He was employed with the first respondent since 2008. On 03.01.2010 at about 03.00 p.m., he was driving a Tempo bearing registration No.TN-59-T-3706 belonging to the first respondent from Vellicode to Senamvilai for the purpose of unloading marble. After unloading marble, when he was returning back to Vellicode while the Tempo reached Senamvilai Government School at about 04.30 p.m., due to mechanical problem, the Tempo turtled into the road. Though the injured precautiously jumped out from the Tempo, the Tempo door dashed against the chest of the applicant. As the result of

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which, he sustained injuries on his both knee, right thigh, shoulder, chest and all over the body. Following which, he was rushed to C.S.I.Neyyor hospital for treatment by one Christopher and Sunil who saw the occurrence. The petitioner was admitted there on 03.01.2010 and discharged after treatment on 28.01.2010 and thereafter he was taking treatment as out patient. He had incurred more than Rs.2,00,000/- as medical expenses. In the course of treatment, a surgery was also done in his shoulder. As a result of which, he was not able to do his normal avocation and he lost his job and income. Hence, he filed a claim petition under Workmen's Compensation Act seeking compensation of Rs. 8,00,000/-.

3.The appellant/second opposite party had filed a counter and categorically stated that all the allegations made by the claimant/injured has to be proved by him and especially the factum that he was employed under the first opposite party and he was drawing salary of Rs.7,000/- per month and batta of Rs.20/- per day. Marking the accident as non fatal accident, the Deputy Commissioner of Labour, Tirunelveli proceeded with W.C.No.1 of 2011.



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4.The first respondent was called absent and set exparte and two witnesses were examined on the side of the claimant as P.W.1 including the claimant and the Doctor who treated the petitioner as P.W.2 and six documents Ex.P1 to Ex.P6 were marked. Neither oral evidence was adduced nor any documents were marked on the side of the second respondent/ second opposite party. On the basis of the evidence adduced and documents produced before the Deputy Commissioner of Labour at Tirunelveli, the learned Commissioner was pleased to observe that though P.W.2 I.e., the Doctor who treated P.W.1 has issued partial permanent disability as 75%, recording the fact that no operation was conducted on the injured and treatment for the blood clot and other injuries in the chest of the injured, resulted from the running of tyre of Tempo across the chest of the injured has been duly treated and specifically observing that even a X ray was not filed on behalf of the injured, the learned Commissioner concluded that the partial permanent disability could be only 65% and on that basis, the learned Commissioner has passed the following award:-



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Head	Compensation awarded
(I)Age of the petitioner at the time of accident:	27 years
(ii)Relevant Factor:	213.57
(iii)Monthly Income of the injured:	Rs.4,000/-
(iv)Permanent disability:	65%
(v)Compensation Calculation :	Rs.4,000x60%x213.57x65%
Total compensation awarded:	Rs.3,33,169/- with interest @ 12% from the date of the claim until the realization and costs.

5.Challenging the same, the second respondent Insurance Company has filed this Civil Miscellaneous Appeal on the ground that the fixation of disability and loss of earning capacity at 65% by the Commissioner despite absence of any fracture is unacceptable and challenged the quantum of the award.

6.Heard the learned counsel appearing for the appellant Mr.S.Srinivasa Raghavan and the learned counsel appearing for the second respondent Mr.S.C.Herold Singh and perusal the materials available on records.



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7. Though the injured claimed compensation of Rs.8,00,000/- on the basis of fact that he was drawing a salary of Rs.7,000/- per month and daily batta of Rs.30/-, the learned Commissioner has meticulously taken note of the fact that the claimant failed to prove the same by oral or documentary evidence. Thereafter, taking into consideration the cost of living at the time of accident and taking into consideration, the maximum salary in terms of the Workmen's Compensation Act on the date of accident, I.e., 03.01.2010 as Rs.4,000/-, 60% of the same has been taken by the learned Commissioner for calculating the monthly salary of the injured. That apart, though the Doctor who treated the injured deposed his evidence as P.W.2 and has marked several documents with regard to the treatment given to the injured and has also marked the disability certificate as Ex.P5, thereby, certifying partial permanent disability as 75%, considering the nature of treatment and the nature of injury sustained by the injured, the learned Commissioner had rightly fixed the partial permanent disability at 65% and arrived at a just award compensating the claim of the injured. As a result of which, this Court is not inclined to interfere in the order passed by the learned Commissioner.



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8. Accordingly, the Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The Deputy Commissioner of Labour,
Tiruchirappalli.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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