



WEB COPY

C.M.A.No.888 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No. 888 of 2021

Jayaram @ Jayaraman

...Appellant(s)

Vs

1. K.Manivelu

2.Divisional Manager,
National Insurance Company Ltd.,
L.R.N.Building,
Sarada College Road,
Salem - 636 001

...Respondent(s)

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923, against the Order dated 30/05/2020 passed by the learned Commissioner of Labour, Coonoor , order dt. 30/05/2020 passed oin E.C. No. 49/2019 (old No. 363/2016).

For Appellant(s): Mr.C.Thangaraju

For Respondent(s): Mr.D.Bhaskaran
for R2

R-1 - No appearance

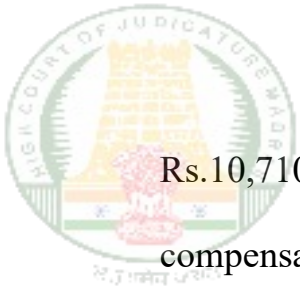


ORDER

This Civil Miscellaneous Appeal is filed by the appellant/claimant under Section 30 of the Employees' Compensation Act, 1923, challenging the order dated 30.05.2020 passed by the learned Commissioner for Workmen's Compensation, Coonoor in E.C. No.49 of 2019 (Old No.363/2016), whereby the learned Commissioner awarded a sum of Rs.2,07,024/- towards compensation for injuries sustained by the claimant in the course of his employment, along with Rs.10,710/- towards medical expenses and interest at 12% per annum on the compensation amount.

2.It is the case of the claimant that he is working as Driver by occupation, was employed under the 1st respondent, the owner of Trailer Lorry bearing registration No.TN 45AV 2494. On 25.06.2016, while the appellant was engaged in loading operations at Hubli Airport, he allegedly fell from the lorry and sustained grievous injuries, including fracture of the lower end of the radius of the right hand, resulting in functional disability. Claiming that the accident occurred in the course of employment, and that the vehicle was insured with the 2nd respondent—Insurance Company, the claimant filed a petition seeking compensation of Rs.20,00,000/- with interest.

3.The learned Commissioner, on consideration of evidence and materials, awarded Rs.2,07,024/- as compensation, calculated on a notional monthly wage of Rs.8,000/-, with 25% disability and an age factor of 172.52, along with



Rs.10,710/- towards medical expenses. Aggrieved by the quantum of compensation, the claimant has preferred this appeal.

WEB COPY

4.The learned counsel appearing for the appellant would submit that the learned Commissioner failed to adopt the correct income of the claimant. It was clearly proved by evidence that the claimant was earning Rs.15,000/- per month as salary and Rs.250/- per day as bata, amounting in total to Rs.22,500/- per month. The fixation of income at Rs.8,000/- per month was erroneous, arbitrary, and contrary to the materials on record. The learned Commissioner erred in adopting 25% disability, whereas, on functional assessment, the claimant being a Driver, who suffered a fracture and restricted movement of the wrist, had lost his total earning capacity, and therefore, the disability should have been treated as 100% functional disability. Further, he would submit that the Commissioner erred in awarding interest at 12% only on the compensation amount and not on the medical expenses. Interest, being compensatory in nature, should have been granted on the entire amount from the date of the accident till realization. On these grounds, the learned counsel prayed for enhancement of compensation by fixing monthly wages at Rs.22,500/- and taking the functional disability at 100%.

5.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company would contend that the learned Commissioner has rightly applied Explanation II to Section 4(1) of the Employees'



Compensation Act, which prescribes that in the absence of proof of higher wages, the monthly wage shall be taken as Rs.8,000/-. Further, the appellant failed to produce any document, such as, Salary Slips, Wage Register, or Employer's Certificate to substantiate the claim of earning Rs.22,500/- per month. The Disability Certificate produced shows only 25% functional disability, and there is no medical or expert evidence to prove that the appellant is totally incapacitated from performing his duties as a Driver. The award of Rs.10,710/- towards medical expenses and 12% interest on the compensation amount is in strict compliance with Section 4A(3)(a) of the Act. *Pratap Narain Singh Deo (supra)*. The learned counsel appearing for the 2nd respondent relied upon the Judgment of this Court in the case of **N. Nambi v. A.G. Francis and another dated 20.06.2022**, wherein this Court held at Para 13 as follows:

“13.The "monthly wages" vis-a-vis Section 4(1-B) was not under consideration in the above case. The Court had not dealt with the implication of Section 4(1-B) or the notification of the Central Government dated 31.05.2010. Therefore, the observation in paragraph 26 can be treated merely as an obiter. In fact a perusal of paragraph 26 would demonstrate the same :-

"Prior to the Act 45 of 2009, by virtue of the deeming provision in Explanation II to Section 4, the Monthly Wages of an Employee were capped at Rs.4000/- even where an Employee was able to prove the payment of a monthly wage in excess of Rs.4,000/-. The legislature, in its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare legislation did not



enhance the quantum in the deeming provision, but deleted it altogether. The amendment is in furtherance of the salient purpose which underlies the 1923 Act of providing to all Employee's Compensation for accidents, which occur in the course of and arising out of employment. The objective of the amendment is to remove a deeming cap on the Monthly Income of an Employee and extend to them Compensation on the basis of the actual Monthly Wages drawn by them. However there is nothing to indicate that the Legislature intended for the benefit to extend to accidents that took place prior to the coming into force of the amendment."

The Tribunal has rightly fixed the monthly income of Rs.8,000/- per month as per notification of Section 4(1-B) of the Act. Hence, the learned counsel prayed for dismissal of the appeal.

6.On a perusal of the records, it is seen that the appellant has claimed that he was earning Rs.15,000/- per month plus Rs.250/- per day as bata. However, no documentary evidence, such as, Salary Certificate, Pay Slip, etc., has been produced to substantiate his contention. As rightly found by the Commissioner, under Section 4(1), Explanation II of the Employees' Compensation Act, where monthly wages of the workman are not proved, the wage shall be deemed to be Rs.8,000/- per month. Therefore, the Commissioner adopted the statutory limit and such fixation cannot be faulted in the absence of proof of higher earnings.

Further, the Medical Certificate issued by the Doctor shows that the



appellant suffered malunited fracture of lower end radius (right wrist), **restricted dorsiflexion by 15° and restricted palmar flexion by 10°, and assessed** 25% permanent functional disability. There was no evidence that the appellant was completely disabled from driving. Hence, the Commissioner's assessment of 25% disability cannot be termed perverse or arbitrary. **The claimant contends that interest should have been granted on the medical expenses as well. However, Section 4A(3)(a) of the Employees' Compensation Act provides for interest only on the** amount of compensation payable under Section 4, which relates to compensation for death or injury, not for reimbursement of medical expenses under Section 4(2A). Therefore, the Commissioner has rightly come to a conclusion to award interest on the medical expenses. **Hence, the findings are based on the evidence adduced, which needs no interference.**

7. Accordingly, this Civil Miscellaneous Appeal is dismissed. The Award passed by the learned Commissioner for Workmen's Compensation, Coonoor, in E.C. No.49 of 2019 (Old No.363/2016) dated 30.05.2020 is hereby confirmed. The 2nd respondent—Insurance Company is directed to deposit the balance compensation amount, if any, as ordered by the learned Commissioner, together with interest, within eight weeks from the date of receipt of a copy of this Judgment, to the credit of the said E.C.No.49 of 2019, if not already deposited. On such deposit, the claimant is permitted to withdraw the entire



award amount with proportionate accrued interest and costs by making necessary applications.

WEB COPY

The claimant is directed to pay the Court fee for the compensation amount, if required. The Court below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimant. No costs. No costs.

15-07-2025

mps

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

mps

To

1.The Commissioner of Labour,
Coonoor,

2.The Section Officer,
VR Section,
Madras High Court.



WEB COPY

C.M.A.No.888 of 2



T.V.THAMILSELVI, J.

mps

C.M.A. No. 888 of 2021

15-07-2025