



C.M.A.No.519 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.519 of 2025

Kumar

... Appellant

VS.

1.M.Deepan

(Notice to the 1st respondent may be dispensed with for the time being for which separate petition filed)

2.The Manager, National Insurance Company Limited,
No.1631-1/B, 1st floor, Salem-Bhavani Main Road,
Sankari, Salem District-637301.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of Employees Compensation Act, 1923, to set aside the order made in W.C.No.84 of 2015 on the file of the Employee's Compensation Commissioner, Coonoor dated 03.04.2019 and for enhancement of compensation.

For Appellant : Mr.C.Kulanthaivel

For R2 : Dr.C.Paranthaman

For R1 : Notice Dispensed With



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J U D G M E N T

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Not satisfied with the quantum of compensation awarded by the Employee's Compensation Commissioner, Coonoor, the appellant/claimant has come by way of this appeal.

2. Heard the arguments of learned counsel appearing for the appellant and learned counsel appearing for the 2nd respondent-Insurance Company.

3. Since the 1st respondent was set *ex parte* before the Employee's Compensation Commissioner, notice to the 1st respondent was dispensed with.

4. It is the case of the appellant/workman, he was employed as a Loadman under 1st respondent. When he was unloading cut plam trees loaded in a Lorry bearing Registration No.TN 30 R 0538, he sustained injury and suffered fracture in his neck, fracture in left side ribs, fracture in right acetabulum and head injury. The workman was initially treated with first aid in Government Hospital, Andhiyur and then, he was taken to Trust



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Hospital, Erode and then to Ganga Medical Centre and Hospital (P) Ltd., Coimbatore. The lorry was insured with the 2nd respondent-Insurance Company. The injured/workman was aged about 36 years on the date of accident. It was claimed by the appellant/claimant that he was earning a sum of Rs.12,000/- per month as a Loadman under the 1st respondent. Therefore, a claim petition was filed by the appellant/claimant before the Court of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Salem, seeking a compensation of Rs.10,00,000/- with interest at the rate of 12%.

5. The 1st respondent was set *exparte* before the Employee's Compensation Commissioner and the claim was resisted only by the 2nd respondent-insurance company by filing counter. In the counter, the 2nd respondent disputed the manner of accident as averred in the claim petition. The 2nd respondent also disputed the age, income and avocation of the appellant/workman.

6. Before the Employee's Compensation Commissioner, on behalf of the appellant-workman, he was examined as PW.1. A Doctor was examined



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on his side as PW.2. On the side of the respondents, no witness was examined. 12 documents were marked on behalf of the appellant-workman as Exs.P1 to P12. On the side of the respondents, no documents were marked. The Disability Certificate issued by the Medical Board was marked as Ex.C1.

7. Based on the evidence available on record, the Commissioner came to the conclusion that the employer and employee relationship existed between the 1st respondent and the appellant. The Commissioner based on the Disability Certificate issued by the Medical Board-Ex.C1, came to the conclusion that the appellant-workman had not suffered any disability. Therefore, no amount was awarded under the head loss of earning capacity due to disability. The Commissioner directed the 2nd respondent/Insurance Company to pay a sum of Rs.47,441/- towards medical expenses to the workman based on the medical bills produced by him and marked as Ex.P9 series. Not satisfied with the said quantum of compensation awarded by the Commissioner, the appellant-workman has come by way of this appeal.



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8. The learned counsel appearing for the appellant by taking this Court to Section 4 (2-A) read with Section 4-A Sub Clause (3)(a) of the Employee's Compensation Act, 1923 would submit that employer, who failed to pay the compensation to the injured-workman within 30 days from the date of accident is liable to pay statutory interest at the rate of 12% and the Commissioner committed an error in not awarding any interest as per the statute. The learned counsel further by taking this Court to the nature of injury mentioned in the Disability Certificate-Ex-P10 issued by the PW.2-Doctor, submitted that the appellant-workman suffered 54% of partial permanent disability and he is disabled from continuing his work as a Loadman and the said document was overlooked by the Commissioner.

9. Based on the submissions made by the learned counsel appearing for the appellant, this Court formulated the following substantial question of law for consideration:-

“Whether the injured claimant is entitled to interest for the entire compensation including medical expenses incurred by him as per Section 4(2-A) read with 4-A (3)(a) of the Employee's Compensation Act, 1923?”



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10. The learned counsel appearing for the 2nd respondent-Insurance

Company was heard on the substantial question of law.

11. The learned counsel appearing for the 2nd respondent-Insurance

Company would submit that though a Doctor was examined on the side of the workman and he issued a Disability Certificate certifying that the workman suffered a partial permanent disability of 54%, the Disability Certificate issued by the Competent Medical Board mentions that the workman has not suffered any disability and the same will prevail over the certificate issued by the PW.2. The learned counsel further submitted that the Commissioner based on Ex.P9-Medical Bills produced by the workman, directed the 2nd respondent to pay a sum of Rs.47,441/-, the same is just and reasonable and hence, no interference is called for.

12. On behalf of the appellant-workman, a Doctor was examined as

PW.2 and through him Ex.P10-Disability Certificate was marked. The contents of the certificate is extracted in the impugned order passed by the Commissioner. After marking of the said document, the 2nd respondent filed an application before the Commissioner seeking examination of the



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workman by the Competent Medical Board mainly on the ground that the disability mentioned in the certificate issued by the PW.2 was on higher side. The said application was allowed and the workman was sent for examination by the Competent Medical Board. The Disability Certificate issued by the Medical Board is marked as Ex.C1. The same reads as follows:-

“Medical Board Opinion (Based on Ortho, Physiatric Opinion and Surgery Opinion):-

- 1) Ortho - No permanent orthopaedic disability.*
- 2) Physician - Medically fit.*
- 3) Surgeon - Nil permanent / Temporary disability.”*

13. Therefore, it is clear that the Medical Board, which examined the workman came to the conclusion that he had not suffered any disability. Certainly, opinion given by the Medical Board will prevail over the disability certificate issued by the Private Doctor, who was examined as PW.2.



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14. When workman has not suffered any disability, the appellant is not entitled to any amount under the head loss of earning capacity due to disability. The claim of the workman under the said head was rightly negatived by the Commissioner, I do not find any reasons to interfere with the said finding.

15. Section 4-A sub section (1) of the Employee's Compensation Act, 1923, reads as follows:-

“4-A. Compensation to be paid when due and penalty for default.-(1) Compensation under Section 4 shall be paid as soon as it falls due.”

16. Section 4-A sub section (3)(a) and (b) of the Employee's Compensation Act, 1923, reads as follows:-

“(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not



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exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.”

17. A close reading of the above provisions would make it clear that any employer, who fails to pay the compensation due under the act, within one month from the date it becomes due, shall be directed by the Commissioner to pay simple interest at the rate of 12% per annum. In the case on hand, the employer failed to pay compensation amount within 30 days from the date of accident. Therefore, he is liable to pay interest at the rate of 12% as per the statutory mandate, from the date of accident (the day on which compensation falls due for payment).



18. A Three Member Bench of the Apex Court in ***Pratap Narain***

Singh Deo vs. Srinivas Sabata and others reported in ***AIR 1976 SC 222*** =

MANU/SC/0021/1975, while considering similar provision in predecessor legislation, Workmen Compensation Act observed as follows:-

“7. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workmen by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due after the commissioner's order dated May 6, 1968 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of a agreement, be settled by the commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.”

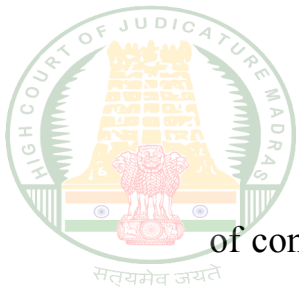


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19. The law laid down by Apex Court in the above mentioned case was followed by Division Bench of this Court in the ***Oriental Insurance Company Ltd. vs. Kaliya Pillai and others*** reported in **2003 (1) LW 113 – MANU/TN/2046/2002**. The relevant observation of Division Bench reads as follows:-

“9. As stated earlier, the Workmen's Compensation Act, being a beneficial legislation, considering the object and scheme of the Act, particularly after insertion of section 4A, we hold that interest for the compensation amount would accrue 30 days after the date of accident and not from the date of quantification. To make it clear that we are of the view that the liability to pay interest would run from the date on which the right to receive compensation accrues in favour of the workman namely the date of the accident and not on the date of issuance of orders by the Commissioner for Workmen's compensation.”

20. In view of the law settled in the above mentioned case law, the Commissioner, after fixing the amount payable to the workman under the head medical expenses, should have directed the 2nd respondent-insurance company to pay statutory interest. Therefore, this Court holds that the appellant is entitled to interest at the rate of 12% per annum on the amount



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of compensation namely Rs.47,441/- from 30.07.2012 to date of realisation.

WEB COPY The question of law framed is answered in affirmative and in favour of the appellant.

21. The 2nd respondent/Insurance Company is directed to deposit the award amount of Rs.47,441/- together with interest at the rate of 12% per annum from 30.07.2012 to the date of realisation, after deducting the amount already deposited, if any, to the credit of E.C.No.84 of 2015 on the file of the Employee's Compensation Commissioner, Coonoor, within a period of four weeks from the date of receipt of copy of this judgment. On such deposit, the appellant/claimant is entitled to withdraw the award amount by making formal application.

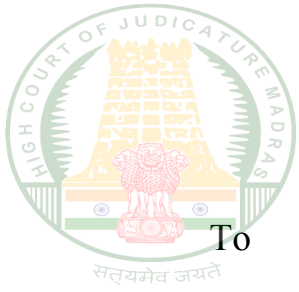
22. Accordingly, the Civil Miscellaneous Appeal is partly allowed.

The 2nd respondent is directed to pay statutory interest as indicated above.

24.02.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm

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To

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- 1.The Employee's Compensation Commissioner,
Coonoor.
- 2.The Manager, National Insurance Company Limited,
No.1631-1/B, 1st floor, Salem-Bhavani Main Road,
Sankari, Salem District-637301.
- 3.The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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