

(2014) 01 MAD CK 0078
In the Madras High Court
Case No : C.M.A. No. 3803 of 2004

A.M. Ibrahim

APPELLANT

Vs

Zigzag Solutions Private Limited and Another

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Workmens Compensation Act, 1923 — Section 4-A, 4A(3)

Citation : (2014) 2 AnWR 25 : (2014) 141 FLR 738 : (2014) 2 LLJ 44

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S. Palanivelu, J.—This appeal is filed by the workmen against the award dated 29.06.2004 made in W.C. No. 162 of 2003 by the Deputy Commissioner of Labour - I (Commissioner for Workmen's Compensation - I), Chennai - 6. The applicant in his application stated that he was a driver under the first opposite party and he sustained injuries i.e., fracture of right femur and back lane fracture and fracture at right hip, dislocation in right shoulder as well as in left wrist and multiple injuries all over the body, in the accident which took place on 23.07.2002 at about 6.00 p.m., in the course of employment under the first opposite party; and that after the accident, the applicant took treatment at Jayashree hospital on 23.07.2002 and 24.07.2002 and then continued his treatment as inpatient at P.K. Hospital from 26.07.2002 to 28.08.2002 and then continued his treatment at KMC Hospital from 28.07.2002 to 21.08.2002 and till now continuing his treatment as outpatient; and that during the course of treatment, a steel rod has been inserted in the right femur and also a screw has been inserted in the right hip and consequently, the applicant's movement has been totally restricted and he could not do any normal work at the age of 35 years and as such the loss of earning capacity has to be taken into account as 100%. It is also stated that since the first opposite party took Insurance Policy with the second opposite party, the second opposite party is liable to pay

compensation to the applicant. Hence, he claimed compensation for a sum of Rs. 5,00,000/- payable by the second opposite party with interest from the date of accident.

2. Even though the first opposite party in its counter admitted that the applicant was working as Car Driver under this opposite party, denied the income of the applicant. It is also stated that the first opposite party is not liable to pay compensation and the second opposite party alone is liable to pay compensation as the accident took place due to the negligent of the applicant and the van bearing registration No. TN-09-S-708 was insured with the second opposite party and the same was valid from 23.04.2002 to 22.04.2003, and hence they prayed that the claim petition may be dismissed against this first opposite party with costs.

3. The second opposite party in its counter denied the avocation, age and income of the applicant, alleged accident, alleged injuries sustained by the applicant, and the period of treatment undergone by the applicant etc. The fact that the alleged accident had occurred in the course of and arose out of the applicant's alleged employment with the first opposite party, was also denied in the counter. It is also denied that the vehicle involved in the alleged accident was covered by a valid policy of insurance issued by the second opposite party, on the date of the accident and there was no breach of any conditions stated therein. Therefore, the second opposite party prayed that the above Claim Petition may be dismissed against this second opposite party with exemplary costs.

4. On the side of the applicants, two witnesses were examined and 13 documents were marked as exhibits. No witness was examined and no document was marked on the side of the respondents/opposite parties.

5. On analysis of material records and on the evidence of the applicant, the Deputy Commissioner for Labour - I, Chennai - 6, came to a conclusion that the applicant was working under the first opposite party and the accident took place in the course of and arose out of the employment and awarded a sum of Rs. 3,68,896/- as compensation to the applicant and directed the second opposite party to pay compensation to the applicant within 30 days from the date of receipt of the order, in default to pay the compensation together with simple interest at the rate of 12% per annum from the date of the accident. Challenging the same, the workmen has filed the present appeal.

6. At the time of admission of the appeal, the following substantial questions of law were framed for consideration:

(1) Whether the Deputy Commissioner for Labour-I (Commissioner for Workmen's Compensation-I) ought not to have fixed the loss of earning capacity as 100%?

(2) Whether the Deputy Commissioner for Labour-I (Commissioner for Workmen's Compensation-I) is right in not awarding interest at the rate of 12%

per annum from the date of accident u/s 4A(3) of Workmen's Compensation Act, while the award was passed on merits?

7. Learned counsel appearing on behalf of the applicant would submit that the Deputy Commissioner of Labour ought to have fix the loss of earning capacity of the appellant as 100%, while the appellant is not in a position to do any normal work especially the driving work after the accident and in support of her contention, she would cite a judgment of this Court in 2013 ACJ 2468 . Learned counsel for the applicant would further submit that the Deputy Commissioner of Labour ought to have awarded interest at the rate of 12% per annum from the date of the accident u/s 4A(3) of the Workmen Compensation Act and cite a judgment of this Court in a Batch of C.M.As. (C.M.A. No. 823 of 2001 etc., batch) reported in 2010 (2) TNMAC 80 (DB). Hence she prays for enhancement of compensation with interest at the rate of 12% per annum from the date of the accident.

8. Heard both sides and perused the materials available on record.

9. As the age, avocation and income of the appellant are not disputed in the appeal, the finding of the Tribunal regarding the same is hereby confirmed. Insofar as percentage of loss of earning capacity is concerned, considering the gravity of injuries sustained by the appellant as well as the fact that the appellant is not in a position to do any normal work, especially the driving work after the accident, and following the judgment of this Court in Oriental Insurance Co. Ltd., Chennai v. R. Mahalingam (supra) this Court is of the view that loss of earning capacity suffered by the claimant is 100%. Accordingly, the first substantial question of law is answered in favour of the appellant. Hence, the compensation is calculated as follows:

10. As regards the interest on compensation, the Hon"ble Supreme Court has held that the interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/orders passed by the Deputy Commissioner of Labour. The decision of the Supreme Court has been followed by the Division Bench of this Court in the judgment reported in 2010 (2) TNMAC 80 (DB) (supra) cited above and the observation made in paragraph 27 of the said judgment reads as follows:

27. In the result, the reference is answered as follows:

i. The word "falls due" occurring u/s 4-A of the Workmen's Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench decision of the Hon"ble Supreme Court of India reported in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, and Kerala State Electricity Board and Another Vs. Valsala K and Another, , means that the interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/orders passed by the Commissioner for Workmen's Compensation.

ii. The decisions rendered by the Single Bench of this Court in the decisions

reported in Marimuthuammal @ Marimuthu and M. Periyasamy Vs. R.P.P. Construction (P) Ltd. and Others, ; A. Chairmen v. A. Thirumeni and Another, 2008 (1) TNMAC 38 had laid down the correct proposition in consonance with the ratio laid down by the Larger Bench of the Hon''ble Supreme Court of India in the above cited decisions.

Following the aforesaid observation of the Hon''ble Apex Court and this Court, I am of the view that interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/orders passed by the Deputy Commissioner of Labour. Hence, this Court fixed the interest at the rate of 12% per annum from 30 days after the date of the accident. Accordingly, the second substantial question of law is answered.

11. It is stated that the claimant has already withdrawn Rs. 3,68,896/- from the deposit. The second respondent is directed to deposit the balance amount of Rs. 92,224/- (Rs. 4,61,120/- Rs. 3,68,896/-) along with interest at the rate of 12% per annum from 30 days after the date of the accident. On such deposit, the appellant is permitted to withdraw the same. The Civil Miscellaneous Appeal is allowed accordingly. No costs.