(2010) 08 MAD CK 0456

In the Madras High Court

Case No : C.M.A. No. 1134 of 2005

National Insurance Co. Ltd., Branch — APPELLANT

Vs

P.G. Kannan and P. Selvaraj — RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:
Workmens Compensation Act, 1923 — Section 10, 30

Citation : (2010) 08 MAD CK 0456

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; S. Kalyanaraman, for R1, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The appeal is filed by the insurance company u/s 30 of the Workmen''s Compensation Act, 1923, against the order dated 20.12.2004 passed in W.C. No. 263 of 2004 on the file of the Commissioner for Workmen''s Compensation, Deputy commissioner of Labour (Commissioner for Workmen''s Compensation), Chennai - 600 006.

2. When the appeal came up on 15.04.2005, this Court has admitted the same, on the following substantial questions of law.

1) Whether the Lower Court has grossly erred in accepting the disability at 40% as assessed by P.W.2 contrary to the nature of injuries.

2) Whether the Lower Court has grossly erred in fixing the loss of earning power at 40% for injuries to the jaw which was to high as the disability would not impair the working capacity of the injured to such an extent?

3. Background facts in a nutshell are as follows:

One injured Kannan was working as a driver under the second respondent met with motor traffic accident on 17.04.2004 at about 11.00 A.M. While the said injured was driving the lorry in Madurai to Melur main road, a bus bearing registration No. TN 59 N 0698, came in a rash and negligent manner and hit the lorry. Due to the impact, the claimant sustained grievous injuries all over the body. He filed a claim petition u/s 10 of the Workmen''s Compensation Act before the Deputy commissioner of Labour claiming a sum of Rs. 2,00,000/- as compensation. The Lorry was insured with the appellant insurance company who resisted the claim. On pleadings, the Deputy Commissioner of Labour framed the following issues:

1. Whether the deceased employee was died during the course of employment or not?

2. What is the age and monthly salary of the deceased?

3. What is the loss of earning capacity due to the accident?

4. What is the compensation the claimants are entitled to and from whom?

After considering the oral and documentary evidence, the Deputy commissioner of Labour held that that accident had occurred only during the course of employment and awarded compensation of Rs. 2,01,499/- and the computation of the above are as under:

1. Age = 24 2. Relevant factor = 218.47 3. Monthly salary = Rs. 3,843/- 4. Loss of earning capacity = 40% 5. computation of compensation = 60/100 x 3843 x 218.47 x 40/100 = Rs. 2,01,499/-

Aggrieved by that award, the appellant insurance company has filed the present appeal.

4. The learned Counsel appearing for the appellant insurance company vehemently contended that the Deputy Commissioner of Labour erred in fixing 40% towards loss of earning capacity without any doctor evidence that 40% disability affects the earning capacity. Therefore, the order passed by the Deputy Commissioner of Labour is not in accordance with law and the same should be set aside.

5. The learned Counsel appearing for the claimants submitted that the Deputy Commissioner of Labour has considered all the facts and circumstances of the case and awarded just, fair and reasonable compensation. Therefore, the order passed by the Deputy Commissioner for Labour is in accordance with law and the same should be confirmed.

6. Heard the counsel. On the side of the claimants, P.Ws.1 and 2 were examined and documents Exs.P1 to P8 were marked. P.W.1 is the claimant. P.W.2 is Dr. Sanmugapriya, Ex.P1 is the FIR, Ex.P2 is the registration certificate, Ex.P3 is the driving licence, Ex.P4 is the permit, Ex.P5 is the insurance policy, Ex.P6 is the discharge summary, Ex.P7 is the disability certificate, Ex.P8 X-ray were marked. On the side of the appellant insurance company, no one was examined and no document was marked to substantiate their claim. After considering the above oral and documentary evidence, the Deputy Commissioner of Labour has given a

categorical finding that the accident had occurred only during the course of employment and awarded compensation.

7. At the time of accident, the injured was aged about 24 years. The Deputy Commissioner of Labour has fixed the age of the claimant at 24 years. Ex.P3 is the driving licence in which, it is stated that the age of the injured was 24 years at the time of accident. Therefore, the Deputy Commissioner of Labour has correctly fixed the age of the deceased at 24 years. The claimant claimed that he was earning Rs. 4,000/- per month, but there is no document to support the same. Therefore, the Deputy Commissioner of Labour fixed the monthly income at Rs. 3,843/- on the basis of Minimum Wages Act. There is no dispute regarding the same and therefore the same is confirmed. Further, the Deputy Commissioner of Labour has fixed 40% disability towards loss of earning capacity. The learned Counsel for the appellant vehemently contended that there is no expert opinion available on record to the effect that 40% disability affects the earning capacity. P.W.2 doctor who examined the claimant and determined the disability at 40%. Ex.P7 is the disability certificate. The claimant sustained injury in forehead and jaw and the said injuries will not certainly affect the earning capacity. Therefore, the Deputy Commissioner of Labour is wrong in fixing the loss of earning power at 40% without any basis. After taking into consideration of the nature of injuries, it is reasonable to award 25% towards loss of earning capacity as against 40% awarded by the Deputy Commissioner of Labour. The modified compensation is works out as follows:

60/100 x 3843 x 218.47 x 25/100 = Rs. 1,26,000/-

8. In the result, the claimant is entitled to compensation of Rs. 1,26,000/- as against Rs. 2,01,499/- awarded by the Deputy Commissioner of Labour. It is stated by the learned Counsel for the appellant that the entire award amount has already been deposited and the claimant also permitted to withdraw 50% of the award amount. Under these circumstances, the claimant is permitted to withdraw the modified compensation of Rs. 1,26,000/-, less the amount already withdrawn on making proper application. The appellant insurance company is also permitted to withdraw the balance amount on making proper application. In these circumstances, the substantial questions are answered in favour of the appellant.

9. In the result, the appeal is disposed of. No costs.

