
(2003) 04 MAD CK 0184

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 39 of 1995

Oriental Insurance Company Limited

APPELLANT

Vs

Mohan (deceased), G. Anandakumar and Mrs. Ramuammal

RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2004) ACJ 2046 : (2003) 3 LLJ 890 : (2003) 4 LW 125 : (2003) 2 MLJ 443

Hon'ble Judges : S. Sardar Zackria Hussain, J;P. Sathasivam, J

Bench : Division Bench

Advocate : M.B. Badrinath, for N. Vijayaraghavan, for the Appellant; R. Saravanan, for A.S. Farida for Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

1. The Oriental Insurance Company, Virudhunagar, aggrieved by the order of the Workmen's Compensation Commissioner (Deputy Commissioner for Labour), Madurai dated 08.08.1994 made in W.C. No. 171 of 1993 has preferred the above appeal.

2. In respect of grievous injuries sustained in a motor vehicle accident that took place on 30.11.1992, the first respondent herein - applicant has prayed for a compensation of Rs. 1,04,960/- before the Deputy Commissioner for Labour. Before the said Authority, the applicant himself was examined as A.W.1 and Dr. L.T. Thulasi Raman as A.W.2 and marked Exs.A.1 to A.12 in support of his claim for compensation. On the side of the management, no one was examined, however, the Insurance Company has marked Exs.R.1 and R.2 in support of their defence. The Authority, after considering all the materials, after holding that the applicant sustained injuries in the course of his employment, based on the evidence of the Doctor, disability and after assessing the loss of earning capacity, directed the Insurance Company to pay a sum of Rs. 1,04,960/-. Questioning the said order, the appellant - Insurance Company has filed the present appeal.

Pending disposal of the appeal, on the death of the first respondent - applicant, his legal representative - mother, namely, Mrs. Ramu Ammal was brought on record as third respondent.

3. We have heard, Mr. M.B. Badrinath, learned counsel for the appellant and Mr. R. Saravanan, learned counsel for the contesting third respondent.

4. Mr. M.B. Badrinath, learned counsel for the appellant - Insurance Company raised the only contention that whether the Deputy Commissioner is justified in fixing the loss of earning capacity to the extent of 100% without a specific assessment by an expert, namely, the Doctor?

5. It is seen from the evidence of the injured / applicant as A.W.1 that while he was working as a Driver with the opposite party No. 1, on 30.11.1992, he met with an accident, thereby sustained various injuries. The First Information Report has been marked as Ex.A.3. A perusal of Ex.A.3 shows the occupation, the manner of accident and the details of injuries. In the absence of any valid objection, we are of the view that the Authority is right in holding that the applicant sustained injuries in the course of his employment.

6. At the time of accident, the applicant was aged about 29 years. His school record sheet has been marked as Ex.A.1, which shows his date of birth as 20.06.1963 and accordingly, the Authority is right in fixing his age as 29 at the time of accident.

7. Though in the claim petition the applicant has stated that at the time of accident he was getting wages of Rs. 1,200/- per month, in the evidence before the Authority he has stated that he was paid wages of Rs. 1,000/- per month and Rs. 40/- towards batta per day. The Authority in the absence of documentary evidence, applying the minimum wages fixed by the Government of Tamil Nadu vide G.O.(2D) 14, Labour and Employment Department dated 19.03.1991, fixed Rs. 1,163/- per month as probable wage of the applicant. However, in the light of Section 4(1)(b) of the Workmen's Compensation Act 1923 (in short "the Act"), fixed his wage at Rs. 1,000/- per month for the purpose of determining the compensation.

8. Apart from the evidence of the applicant, Dr. Thulasi Raman was examined as A.W.2. A.W.1 has explained that due to the accident he had a fracture on his left thigh and sustained injuries on left hand and chest. He also deposed that because of the injuries, he is not able squat and move his left leg freely. The Doctor - A.W.2, after examination of the injured - applicant, assessed the disability of A.W.1 to the extent of 48%, which is a permanent one, he issued the disability certificate, which has been marked as Ex.A.8. In order show that the applicant was a Driver, he had produced his driving license before the Authority. Taking note of the fact that the applicant is a Driver by profession and in the light of the specific assertion in the application as well as in his evidence before the Authority, considering all the materials, the Deputy Commissioner calculated his loss of earning capacity to the extent of 100%.

9. The learned counsel for the appellant by drawing our attention to Section 4(1)(c)(ii) of the Act as well as the Full Bench decision of the Kerala High Court in the case of New India Assurance Co., Ltd., vs. Sreedharan reported in New India Assurance Co. Ltd. Vs. Sreedharan, would contend that the Authority is not competent to assess the loss of earning capacity, particularly in the absence of assessment by an expert, namely, Doctor. We are unable to accept the said contention for the following reasons.

10. We have referred to the specific averments in the application regarding nature of injuries, fracture in left thigh, applicant's evidence before the Authority, the evidence of the Doctor - A.W.2, his assessment and permanent disability certificate - Ex.A.8 as well as the fact that the applicant is a Driver by profession. It is the specific claim of the applicant that after the accident, his left leg has been shortened by 2 ". We have also noticed the following injuries in the medical certificate as well as disability certificate produced by the applicant, (i) fracture in the left thigh; (ii) stiff knee; (iii) pain in the left knee; and (iv) shortening of left leg by about 2 ". Though the Doctor has assessed the disability to the extent of 48%, as rightly observed by the Authority, it is not for the Doctor to assess the earning capacity. In this regard it is useful to refer the decision rendered by us in CMA.Nos.1237 to 1240 of 1994 and 1598 of 1998 on 25.04.2003, wherein we have held that the Doctor - Expert can assess the disability, it is for the Authority concerned to assess the loss of earning capacity on the basis of the materials, namely, medical certificate, disability certificate, evidence of Doctor, evidence of the injured - applicant, avocation and the nature of work to be done in future. In such a circumstance, we are unable to accept the only argument of the learned counsel for the appellant, namely that the Authority has committed an error in assessing the loss of earning capacity. In the light of the materials placed that the injured - applicant is a Driver by profession and of the fact that he cannot drive the vehicle with the said disability, we are in agreement with the conclusion arrived at by the Deputy Commissioner for Labour and reject the contra argument of the learned counsel for the appellant. Even otherwise, the assessment of loss of earning capacity being a question of fact and the Authority has correctly assessed the same, in the light of Section 30 of the Act, we do not find any substantial question of law for interference.

11. Though no argument was advanced with regard to quantum of compensation determined, after perusal of all the details furnished, we are of the view that the amount arrived at by the Authority, namely Rs. 1,04,960/- is quite reasonable and acceptable and in accordance with the prescribed formula.

In the light of what is stated above, we do not find any merit in the appeal; accordingly, the same is dismissed. No costs.