(2016) 06 KAR CK 0009

In the Karnataka High Court

Case No : M.F.A No. 22501 of 2009 (WC)

Parasuram APPELLANT

Vs

Paramajeethkaur RESPONDENT

Date of Decision : 02-06-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 4(l)(c)(ii)

Citation : (2016) AAC 1993

Hon'ble Judges : Mrs. Rathnakala, J.

Bench : Single Bench

Advocate : Lokesh Malavalli, Advocate, for the Petitioners; S.S. Joshi, Advocate, for the Respondents No. 2; Notice is dispensed with VCO dated 21.11.2012, for the Respondents No. 1

Final Decision : Partly Allowed

Judgement

Mrs. Rathnakala, J.—Though the appeal is listed for admission, with consent of the learned counsel on both sides, the same is heard for final disposal.

2. The indisputable facts are that the claimant-appellant had suffered injuries i.e., fracture to 8th and 9th ribs in the accident that occurred on 3.5.2005, during the course of his employment, while he was working as a driver of the truck bearing registration No. KA-01/5014 owned by the respondent No. 1. Hence, he filed claim petition under Section. 22 of the Workmen?s Compensation Act, hereinafter referred to ?the Act? for short before the Commissioner for Workmen?s Compensation.

3. Before the Commissioner, the 2nd respondent insurer had contested the claim. The 1st respondent-owner of the vehicle remained ex parte. The Commissioner, on appreciation of the oral and documentary evidence adduced by the parties, assessed the permanent disability sustained by the claimant at 40% and after taking the income of the injured at Rs. 3500/- per month awarded compensation of Rs. 1,85,950/- with interest at the rate of 12% per annum payable 30 days

after the date of order.

4. Shri. Lokesh Malavalli, the learned counsel for the appellant-claimant submits that the Commissioner is not justified in taking the income of the claimant at Rs. 3,500/- and that as per the amended provisions of Section-4(2) of the Act, the Commissioner would have assessed the income at Rs. 4000/- per month. The doctor who treated the injured has assessed the disability at 40%, that has substantially reduced the compensation. That apart, he submitted that in view of the judgment of the Apex Court in the case of Oriental Insurance Co. Ltd. v. Siby George and others (2012 ACJ 2126) : (AIR 2012 SC 3144), the claimant is entitled for interest commencing from 30 days after the date of accident, which is overlooked by the Commissioner.

5. On the other hand, Shri. S.S. Joshi, learned counsel appearing for the 2nd respondent-insurer vehemently submits that in the absence of any documentary proof, as regards the income of the injured, the Commissioner has rightly assessed his income at Rs. 3,500/- per month in accordance with the provisions of Minimum Wages Act. Further, he submitted that since the claimant has failed to examine the doctor who treated him, the Commissioner was justified in assessing the disability at 40% and hence, the impugned order does not calls for interference from this Court. However, as regards the payment of interest is concerned, he fairly concedes that the same be paid with effect from 30 days after the accident.

6. In the light of the above submissions of the respective counsel, the question that arises for my consideration is:

i) Whether the impugned award calls for interference?

7. So far as the income of the claimant is concerned, appreciating the oral evidence on record, the Commissioner did not suspect the contention of the Workmen that he was earning Rs. 6000/- per month, though there was no documentary proof. However, he has assessed the income at Rs. 3,500/- per month, within the permissible limits of the Payment of Minimum Wages Act, 1948. The Commissioner has overlooked the enablement available for him under the provisions of the present Act itself. In case of death or permanent disability, explanation-II of sub-section(l) of Section-4 of the Act contemplates that "where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purpose of computation of compensation shall be deemed to be four thousand rupees only". However, no such deemed provisions is available in respect of partial permanent disability. The injury suffered by the workman being not a scheduled injury and partial permanent disability, the statutory cap on the quantum of compensation is as strictly as per Section-4 (1) (c) (ii) of the Workmen?s Compensation Act, 1923 which reads as under:

"4. Amount of Compensation (1)

(a),(b), (c) and (i) xxx

(ii) in the case of an injury not specified in Schedule-I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury."

8. In that view of the matter, the deemed monthly wages contemplated in respect of the cases of a death or permanent disablement, shall be made applicable in respect of the nonscheduled injury/partial injury also, so long, till the compensation does not exceeds the compensation payable in respect of death or permanent disability. Thus, though the income of the workman was found to be at Rs. 6000/- per month, which is appropriate, having regard to the age of the workman at the relevant point of time and also the date of accident, the deemed income shall be at Rs. 4,000/- per month. Thus, this Court is of the considered view that the Commissioner was not justified in assessing the income of the claimant at Rs. 3500/- per month. As far as percentage of physical disability is concerned, the claimant has not examined the doctor who treated him. In view of the fact that insurer has not challenged the Award, the disability assessed at 40% by the Commissioner cannot be disturbed. Thus, the claimant-appellant is entitled to compensation of Rs. 2,12,515/- (Rs. 4000 x 60 x 221.37 x 40/100 = Rs. 2,12,515/-), as against Rs. 1,85,950/-. Thus, the enhanced compensation comes to Rs. 26,565/-.

9. So far as date of commencement of payment of interest on the award amount is concerned, the Apex Court addressed this issue in its judgment rendered in the case of Oriental Insurance Co. Ltd. v. Siby George and others (2012 ACJ 2126) : (AIR 2012 SC 3144) and negatived the contention of the insurer that the payment of compensation would fall due only after the Commissioner?s Order or with reference to the date on which the claim application is made. Following its own judgment in Pratap Narain Singh Deo, 1976 ACJ 141 (SC): (AIR 1976 SC 222) the Apex Court upheld the principles that the insurer is liable to pay the compensation, as soon as the personal injury was caused to the appellant. In that view of the matter, the clock of interest will being to run from 30th day after the date of accident and not from 30 days after the date of order passed by the Commissioner.

10. In that view of the matter, the appeal is allowed in part. In modification of the impugned Order dated 12-6-2008 passed by the Labour Officer and the Commissioner of Workmen?s Compensation, Haveri in WCA/NF. No. 108/2005, the compensation payable to the claimant-appellant is enhanced from Rs. 1,85,950/- to Rs. 2,12,515/- (Rupees two lakhs twelve thousand five hundered fifteen only) with interest at the rate 12% per annum payable 30 days after the date of accident. The 2nd Respondent insurance company is directed to deposit the enhanced compensation with accrued interest on the entire compensation amount within four weeks from the date of receipt of the certified copy of this Order. Officer to transmit the records to the concerned Commissioner forthwith.

11. Draw up the award accordingly.