

(1997) 08 MAD CK 0126
In the Madras High Court
Case No : C.M.A. No. 781 of 1988

S. John

APPELLANT

Vs

The Commissioner, Corporation of Madras-3

RESPONDENT

Date of Decision : 11-08-1997

Acts Referred:

Citation : (1997) 08 MAD CK 0126

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : T. Fenn Walter, for the Appellant; Ramanlal, for the Respondent

Judgement

R. Balasubramanian, J.—The appellant in this appeal was the applicant in W.C. No. 152/86 on the file of the Deputy Commissioner of Labour I, Madras. The respondent was the respondent before the lower forum. For the purpose of convenience, in this order the parties to this appeal are referred in the same rank in which they were described in the proceedings before the lower Court. The applicant was employed with the first respondent as a watchman is not disputed. The applicant also sustained an injury in an accident which occurred in the course of his employment on 18.06.1996 cannot be disputed since it stands established. The monthly wages of the applicant during the relevant time was Rs. 695/- is also established. Ex.A-1 is the certificate issued by the Government General Hospital, Madras stating that the applicant has suffered a permanent and total disability of 100%. He had suffered fracture dislocation D12 on LI with paraplegia and has complete lesion below D12 level. Ex. A2 is the discharge summary. Ex. A3 is the letter written by the Assistant Divisional Engineer, Corporation of Madras to the Assistant Surgeon of the Government General Hospital requesting for the issue of the necessary medical certificate regarding the applicant. Ex. A4 is the salary certificate for March 1987. Ex. R1 is the letter from paraplegia project for rehabilitating paraplegics in Madras. The applicant examined himself as Applicant's Witness No. 1 and on behalf of the respondent a witness has been examined. The Deputy Commissioner, Workmen's

Compensation accepted the defence of the respondent before it that despite the applicant suffering a total permanent disablement yet he was continuing in his employment in an alternative capacity on a salary of Rs. 768/- per month, and therefore, there is no loss of earning power. Accepting this defence, which is not disputed by the applicant, the claim petition came to be dismissed by the lower forum by order dated 29.8.1987. The correctness of this order is challenged in this Revision.

2. The only question that falls for consideration in this appeal is, whether the mere fact that the injured workman viz., the applicant was continued in service with the respondent even after the accident in an alternative capacity on a salary which is not less than what he was earning, would deny him the benefit otherwise granted to him under the provisions of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act"). A similar question came up for consideration before a Division Bench of this Court and that judgment is reported in the case of *Sree Lalithambika Enterprises v. S. Kailasam* (1988 1 LLN 393). The same argument as advanced before the Tribunal and before me had been advanced before the Bench which decided the case and the learned Judges of this Court categorically rejected the said argument and held that the employment of the injured workman subsequent to the accident in any capacity would not deprive him of the benefits which he is entitled to under the provisions of the Act. To the same effect there is another judgment of this Court rendered by a learned single Judge reported in *Mgt. of Tamilnadu Cement Corporation Ltd. Vs. N. Jayapalan*, . In view of the categorical pronouncement of law rendered by this Court on this aspect, I have no hesitation in holding that the lower forum had committed an error in rejecting the claim petition. Therefore, I am of the opinion that the applicant is entitled to compensation as prayed for under the Act.

3. Coming to the question of compensation to be payable to the applicant, the Act itself contains guidelines. He is found to have suffered 100% disability. Serial No. 3 in Schedule 1 Part 1 states, whenever there is amputation through leg or thigh of one side, the percentage of loss of earning capacity is fixed at 100%. Though the applicant would claim in his evidence that he was only 35 years old on the date of the accident, yet his claim petition would show his age as 40 years and Exs. A1 and A2 also show that his age is 40 years. Therefore, accepting his age as 40 years, taking his loss of earning capacity as 100% and fixing his salary at Rs. 695/- per month, the compensation worked out as per the provisions contained in the Act comes to Rs. 63,999.07, which is rounded off to Rs. 64,000/-. Since the Act itself contemplates the procedure for arriving at a compensation, there is no scope for any guess work whatsoever and therefore, the amount of compensation arrived at as stated above has to be necessarily paid by the respondent to the applicant. Under these circumstances, the order dated 29.8.1987 in W.C. No. 152/86 on the file of the Deputy Commissioner No. 1, Madras-6 is set aside and there is an order in favour of the applicant in the proceedings directing the respondent in that proceedings to pay the sum of Rs. 64,000/- to the applicant. The appeal is accordingly allowed. There shall be no

order as to costs.