
(2011) 11 MAD CK 0206
In the Madras High Court
Case No : C.M.A. No. 1628 of 2005

United India Insurance Co. Ltd., Kumar Complex,
Tiruchengode

APPELLANT

Vs

M. Muthu and Another

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 4(1)

Citation : (2012) 2 MLJ 738

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : K. Suryanarayanan, for the Appellant; N. Manoharan, for the Respondent

Final Decision : Allowed

Judgement

B. Rajendran, J.—Civil Miscellaneous Appeal has been filed by the insurance Company aggrieved against the order of the learned

Commissioner for ""Workmen"s Compensation, Salerfi, in W.C. No. 284 of 2004, dated 21.2.2005. The Civil Miscellaneous Appeal filed by the

insurance Company was admitted on the following substantial question of law:

When the workman sustained a fracture in the leg which disability was assessed at 37% by the medical practitioner, is not the Workmen"s

Compensation Commissioner committed an error of law in assessing the said disability at 100%?

2. The main ground of attack made by Mr. K. Suryanarayanan, learned counsel for the appellant-insurance Company is that the Commissioner for

Workmen"s Compensation has taken the disability at 100%, in a case, where the Doctor had certified 37% disability, in respect of a fracture of

left leg sustained by the first respondent/claimant. Admittedly; when there is no amputation and there is no evidence available to show that the

claimant has lost his job in entirety, the lower Court awarded compensation treating the disability at 100% and hence, aggrieved against the same,

the insurance Company has come forward with this appeal.

3. Mr. N. Manoharan, learned counsel for the first respondent/claimant contended that as per the evidence of the Doctor, there was shortening of

left leg by 2 cm. and therefore, the claimant will not be able to drive the heavy vehicle and hence, the lower Court has rightly fixed the disability at

100% and he prayed for the dismissal of the appeal.

4. Heard both. By consent, the main Civil Miscellaneous Appeal itself is taken up for final disposal. Second respondent-owner of the vehicle was

set ex parte before the lower Court.

5. The question of law raised in this appeal is an interesting one. Here the person injured was the driver of the vehicle. The Doctor, who was

examined as P.W.2, has assessed the disability sustained by the claimant at 37% due to the fracture injury of left leg sustained by him. P.W.2, in

his evidence, categorically stated that the claimant will find it difficult to drive the vehicle or do any strenuous work, as there is shortening of left leg

by 5 cm. due to the mal-union of the bones and therefore, he has assessed the disability at 37%. But, the lower Court has taken into consideration

that because of the mal-union of the bones and shortening of left leg by 5 cm., the claimant will not be totally able to drive the vehicle, but, there is

no independent evidence available to the effect that the claimant has lost his job in entirety.

6. Further, the Workmen's Compensation Act, 1923, contemplates that the Deputy Commissioner of Labour should assess the disability as per

the evidence of Doctor, in the event, the authority did not believe or has reasons to believe that it will be more than or less as it was given, the next

course open to the Deputy Commissioner of Labour is to refer the matter to the Medical Board and thereafter, fix the disability. But, this has not

been done in this case. When there is no specific evidence to show that the claimant sustained 100% disability, the lower Court summarily fixing

the disability at 100% is not in accordance with law.

7. In this connection, learned, counsel for the appellant-insurance Company

relied on two Full Bench decisions, one Karnataka High Court

judgment in Shivalinga Shivanagowda Patil and Another v. Erappa Basappa Bhavihaia, 2004 ACJ 333 : 2004-I-LLJ-1089 (Kant) for the

proposition that it is for the workman to establish by acceptable evidence that after the injury not only he is not able to do the work which he was

performing before the accident but he is not able to do any other work, the loss of earning capacity could be assessed on the basis of such

evidence, which is lacking in this case.

8. The another Full Bench judgment is Kerala High Court decision in United India Insurance Co. Ltd. v. Alavi, 1998 ACT 1048 : 1998-II-LLJ-

896 (Ker), wherein, the Court while answering the question, whether the Commissioner has got the right to fix the percentage of disability, has held

"No". Following the earlier Full Bench judgment in New India Assurance Co. Ltd. Vs. Sreedharan, , the Kerala High Court categorically held that

the Commissioner has no independent power to fix the loss of earning capacity at 100%, without any evidence from the Medical Board.

9. Even otherwise, in the facts and circumstances of the present case, there is no evidence at all to show that the claimant has totally lost the

earning capacity, therefore, the Commissioner ought not to have fixed 100% disability in the facts and circumstances of this case.

10. Similarly, in the ruling cited in Oriental Insurance Co. Ltd. v. Mohd. Nasir and Another 2009 (2) TN MAC 287 (SC): LNIND 2009 SC

1259 the Supreme Court has categorically stated that for determination of compensation the Explanation 1 to Section 4(1)(c) provides that where

there are more than one injuries, aggregate amount of compensation to be taken but same should not exceed amount which would have been

payable in case of permanent total disablement and while determining loss of earning capacity, Tribunal/High Court must record reasons for

arriving at their conclusion. Unfortunately, in the present case, this has not been done so and the function of the Commissioner is to determine the

amount of compensation as laid down under the Act. When there is no such discussion for granting 100% disability, the order passed by the

Commissioner is wrong. Therefore, insofar as fixing the disability at 100%, the question of law is answered in favour of the appellant-insurance

Company,

11. Insofar as the quantum is concerned, the age of the claimant is 40 years at the time of the accident. The proper factor to be adopted is 184.17

and the salary of the claimant is taken as Rs. 3,229/- per month. The disability at 37% as assessed by the Doctor is taken. The compensation

amount to be awarded under the claim could only be worked out as follows:

$$60/100 \times 3229 \times 184.17 \times 37/100 = \text{Rs. } 1,32,020/-$$

Thus, the compensation amount is reduced from Rs. 3,56,811/- to Rs. 1,32,020/-.

In the result,

i. the appeal is allowed to the extent as indicated above.

ii. At this juncture, learned counsel for the first respondent-Claimant brought to the notice of this Court that as per the Division Bench judgment in

N. Ganesan v. Tmt. Thilgavathi and Others, 2010 (3) LW. 89, the interest will accrue one month from the date of accident and not from the date

of quantifying the amount. Therefore, on this amount of Rs. 1,32,020/-, the interest will accrue from one month from the date of accident i.e., on

and from 10.7.2003 till the date of deposit.

iii. It is represented by the appellant-Insurance Company that the entire award amount has been deposited before the Tribunal. The appellant-

insurance Company is permitted to withdraw the excess amount deposited.

iv. No costs in the appeal.