

The Manager, Vs. 1)ramalingam (Died)

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Court : Chennai

Decided On : Feb-12-2015

Judge : D.Hariparanthaman

Appellant : The Manager,

Respondent : 1)ramalingam (Died)

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 12.02.2015 CORAM THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN C.M.A(MD)No.1014 of 2011 and M.P(MD)No.1 of 2014 The Manager, Bajaj Allianz General Insurance Company Ltd., Coimbatore ..Appellant versus 1)Ramalingam (died) 2)Mrs.Pappathi 3)M.Rathinam ..Respondents Appeal filed under Section 30(1) of the Workmen Compensation Act, 1923, against the award dated 10.03.2011 received on 16.05.2011 made in W.C.No.143 of 2006 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour).Dindigul.

For Appellant : Mr.S.Srinivasa Raghavan For Respondents : Mr.S.Gokul Raj :

JUDGMENT

On 24.11.2005, at 09.00 P.M., one Thiru.Ramalingam drove the Mini Door Auto bearing registration No.TN-47-M-4057 and the vehicle met with an accident, in which, the Auto was capsized and the said Ramalingam received injuries.

Due to the accident, he suffered permanent disability at 40%.

Hence, he filed W.C.No.143 of 2006 against the owner of the vehicle and the appellant insurance company.

The claimant examined himself as a witness.

He also examined the Doctor, to establish that he suffered 40% permanent disability.

After giving evidence, the workman died.

Thereafter, his wife was brought on record as the petitioner in the claim petition.

2.The learned Deputy Commissioner of Labour, Dindigul, passed the order dated 10.03.2011 in W.C.No.143 of 2006, directing the appellant insurance company to pay compensation of Rs.1,45,019/-, on coming to the conclusion that the workman suffered 40% permanent disability.

Aggrieved by the same, the appellant has filed the present appeal challenging the award.

3.The only argument that is advanced by the learned counsel for the appellant is that since the workman died immediately after the deposition before the Deputy Commissioner of Labour, there was no loss of earning capacity and therefore, the Commissioner was not correct in ordering compensation.

However, I am not inclined to agree with the said submission made by the learned counsel for the appellant.

4.The accident and the liability to pay compensation is not disputed.

The age of the workman, and his salary are also not disputed.

In fact, the assessment made by the Doctor that the workman suffered 40% permanent disability is also not disputed, but the learned counsel for the appellant has vehemently contended that since the workman died, there was no loss of earning capacity.

Hence, the learned Deputy Commissioner of Labour should have rejected the claim for compensation.

But, I am not able to appreciate the said submission, in view of the definition of partial disablement in Section 2(g) of the Workmen's Compensation Act.

Section 2(g) is extracted hereunder:- "(g).partial disablement?.

means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement."

5.In this case, the evidence of the Doctor was considered by the Deputy Commissioner of Labour and such consideration by the Commissioner is extracted hereunder:- "kDjhuh; jug;gpy; krh-2 lhf;lh; \$p rjp& kDjhuhpd; fztu 14.08.2007-k; Bjjpad;W Cdr; rhd;wpjH; t HA;Fk;bghUl;L ghpBrhjId bra;Bjd; vd;Wk;, mg;BghJ mtUf;F tpgj;Jg; gjpBtL, o!;rhh;\$; rk;khp, rkPgj;jpa Ez;fjph;glk; Mfpatw;iwg; ghprPyid bra;Bjd; vd;Wk;, 24.11.2005 md;W Vw;gl;l tpgj;jpy; mtuJ tyJ g[wA;ifapy; nU vYk;g[fspYk; vYk;g[Kwpt[fs; Vw;gl;lJ vd;Wk; tyJ Bjhs;gl;ilapy; xU fd;wpa fhak; fhzg;gl;lJ vd;Wk;, njw;fhd rpfpr;iria mth; fUh; muR kUj;Jtkidapy; mWit rpfpr;irapd;wp Bkw;bfbhz;Ls;shh; vd;Wk;, jw;rkak; tyJ g[wA;ifapy; cs;s Buoay; vd;w vYk;gpy; Vw;gl;l KwpthdJ Rkhh; 25 ofphp tise;Jk;, gpd;Behf;fp efh;e;Jk; Toa[s;sJ vd;W my;dh vd;w vYk;gpy; Vw;gl;l vYk;gpy; Vw;gl;l vYk;g[Kwpt[nd;Dk; KGikahf TIhj epiyapy; fhzg;gLfpwJ vd;Wk; tyJ kzpf;fl;L & KHA;if Kl;Lfspy; mirthdJ15 Fiwe;J fhzg;gLfpwJ vd;Wk;, tyJ g[wA;ifapy; mirt[fs; 25% Fiwe;J fhzg;gLfpwJ vd;Wk; tyJ g[wA;ifapy; & ifapy; gpoj;jpwdhdJ25 tiu Fiwe;J fhzg;gLfpwJ vd;Wk;, njd; fhuzkhf mtuhy; jhd; bra;Jte;j Xl;Ldh; gzpiaj; bjhlulaytpy;iy vd;Wk;> vdBt nJ xU epue;ju Cdk; vd;Wk;> Cdj;jpd; jd;ikia 40% vd;W fzpj;Js;sjhft[k; bjhptpj;Js;shh;."

6.The workman did not suffer injury as specified in Part II of Schedule I of the Act.

In case, if a workman receives injury and suffered permanent disablement and that the injury comes under Part II of Schedule I of the Act, then, it is deemed to result in permanent disablement.

Even in cases where the injury does not come under Part II of Schedule I of the Act, if the competent Doctor has certified that the workman suffered certain percentage of partial permanent disability, it should be taken that it reduces his earning capacity.

Under such circumstances, Section 4(c) of the Workmen's Compensation Act would apply, which contemplates compensation for both injuries that are specified in Schedule I of the Workmen's Compensation Act and those are not specified in Schedule I of the Act.

At this juncture, it is relevant to extract Section 4(c) of the Workmen's Compensation Act.

"(c) Where permanent partial disablement result from the injury.--- (i) in the case of an injury specified in Part II of Schedule 1, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and (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; Explanation I.?.

Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II.?.

In assessing the loss of earning capacity for the purpose of sub-clause (ii).the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I."

7. In the case of injuries that are coming in Schedule I, there is no necessity for a Doctor to give evidence.

In the case of injuries that are not coming under Schedule-I, a Doctor evidence is a must.

In this case, the injuries are not coming under Schedule-I and Doctor was examined and his deposition is extracted above and his evidence was considered by the Deputy Commissioner of Labour as stated above.

In my view, the Deputy Commissioner of Labour has correctly determined the compensation payable by the appellant insurance company as per Section 4(c) of the Act.

Hence, I do not find any infirmity with the award passed by the Deputy Commissioner of Labour.

The arguments of the learned counsel for the appellant deserve to be rejected.

Accordingly, the Civil Miscellaneous Appeal is dismissed.

In view of the dismissal of the appeal, the 1st respondent/claimant is permitted to withdraw the entire amount lying in the credit of W.C.No.143 of 2006 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour).Dindigul.

Consequently, M.P(MD)No.1 of 2014 is closed.

No costs.

12.02.2015 Index : Yes Internet : Yes NB2 D.HARIPARANTHAMAN, J.

NB2 To Workmen Compensation (Deputy Commissioner of Labour).Dindigul.

C.M.A(MD)No.1014 of 2011 and M.P(MD)No.1 of 2014 12.02.2015

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