

The Divisional Manager, Vs. 1)i.Thomas

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Court : Chennai

Decided On : Feb-20-2015

Judge : D.Hariparanthaman

Appellant : The Divisional Manager,

Respondent : 1)i.Thomas

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 20.02.2015 CORAM THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN CMA(MD)No.183 of 2015 and M.P(MD)No.1 of 2015 The Divisional Manager, United India Insurance Co.Ltd., Divisional Office No.1, 7-A, West Veli Street, Madurai-625 001..Appellant versus 1)I.Thomas 2)Vincent Amalraj ..Respondents Petition filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 28.10.2014 in W.C.No.236/2008 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour).Madurai.

!For Appellant : Mr.V.R.Subramaniam :

JUDGMENT

The appellant is the insurance company.

The vehicle owned by the 2nd respondent was insured with the appellant insurance company.

The details of the vehicle are not relevant for the purpose of this case, since it is admitted that the 1st respondent/workman was in possession of driving licence to drive all kinds of vehicle at the time of accident.

While he drove the vehicle on 11.02.2005, the vehicle met with an accident.

The accident resulted in fracture of L1, L2 and L3 bones in the spinal cord of the 1st respondent and also injuries in his legs, face and head.

He suffered grievous injuries.

He was admitted as inpatient between 11.02.2005 and 18.02.2005.

It was certified that he suffered 40% permanent partial disablement.

The 1st respondent filed W.C.No.236 of 2008 before the Deputy Commissioner of Labour, Madurai, claiming compensation for the permanent partial disability suffered by him in the accident that arose out of and during the couRs.of employment.

2.The appellant resisted the claim, contending that after the accident, there was no loss of earning capacity of the 1st respondent, since his driving licence was renewed after the accident.

The evidence was let in to the aforesaid effect and Exs.R1 and R2 were marked in this regard.

Therefore, it was contended that the 1st respondent did not suffer any loss of earning capacity.

However, the same was rejected by the Deputy Commissioner of Labour and he fixed the loss of earning capacity at 38% and awarded compensation of Rs.1,70,544/-.

This appeal under Section 30 of the Workmen's Compensation Act is against the aforesaid order, raising the following substantial questions of law:- "1)Whether the 1st respondent/employee suffered any loss of earning capacity when his driving

licence has been renewed periodically without any break?.

2)Whether the disability suffered by the 1st respondent/employee suffered any loss of earning capacity due to the disability caused due to the accident injury?."

3.The crux of the issue that is raised is that since the 1st respondent had the benefit of renewal of licence after the accident and he was able to discharge his duties as driver, there was no loss of earning capacity and therefore, the appellant is not liable to pay compensation under the Workmen's Compensation Act.

4.Learned counsel for the appellant has vehemently argued that since the 1st respondent got renewed his licence, there was no loss of earning capacity and that therefore, the learned Deputy Commissioner of Labour erred in awarding compensation.

He has also contended that the renewing authority ought not to have renewed the licence of the 1st respondent, if he really suffered 38% permanent partial disablement.

5.I have considered the submissions made by the learned counsel for the appellant.

6.The only question of law that is raised is as to whether there was any loss of earning capacity since the 1st respondent got renewed his driving licence and that therefore, the Commissioner for Workmen Compensation erred in awarding compensation.

7.In my view, the aforesaid submission of the learned counsel for the appellant is contrary to the very scheme of the Act.

It was the legislation made during the British period.

When the accident took place, the injured workman is not entitled to claim any medical expenses like a case filed under the Motor Vehicles Act i.e., the 1st respondent could not claim expenses for the treatment which he had undergone as inpatient for the period from 11.02.2005 to 18.02.2005 and thereafter as outpatient.

He could not also claim compensation for loss of earning for the period of treatment and under various heads that are normally claimed under the Motor Vehicles Act.

Before the Deputy Commissioner of Labour, the 1st respondent examined himself as a witness.

He also examined the Doctor to prove the permanent partial disablement.

Exs.A1 to A7 were marked.

Ex.A3 is the Discharge Summary issued by the Apollo Hospital, Madurai.

The 1st respondent is not entitled to claim any compensation towards the medical expenses which he incurred for the treatment like in a case filed under the Motor Vehicles Act.

As far as the Workmen Compensation Act is concerned, Section 2(g) defines 'partial disablement' which contains a deeming provision.

8.As per Section 2(g).if a workman received injury specified in Part- II of Schedule-I, then he is deemed to have suffered permanent partial disablement.

Part-II of Schedule-I contains 48 items of injuries and the percentage of loss of earning capacity is noted against each item.

In the case of those injuries, no examination of Doctor is required.

For instance, the fiRs.item is 'Amputation through shoulder joint' and the percentage of loss of earning capacity for the said injury is 90%.

If a workman suffered amputation through shoulder joint, the percentage of loss of earning capacity should be taken as 90% and no Doctor need be examined.

Likewise, item 27 is relating to loss of whole fingers of right or left hand.

If a workman suffered loss of whole fingers of right or left hand, the percentage of loss of earning capacity should be fixed at 14%.

So also, for the loss of two phalanges, the loss of earning capacity should be fixed at 11% as per item 28 of Part II to Schedule I of the Workmen's Compensation Act.

At this juncture, it is relevant to extract Section 2(g) of the Workmen's Compensation Act.

"?.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 2[in Part II of Schedule I].shall be deemed to result in permanent partial disablement."

9.Section 4 deals with amount of compensation that shall be awarded for the death, permanent total disablement and permanent partial disablement.

As far as the present case is concerned, it is relevant to extract Section 4(1)(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."

10.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 partial disablement.

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, as per Explanation II to Section 4(c) of the Workmen's Compensation Act, it should be taken that it reduces his earning capacity.

Under such circumstances, in my view, Section 4(1)(c) of the Workmen's Compensation Act contemplates compensation for both injuries that are specified in Part II of Schedule I of the Workmen's Compensation Act and those are not specified in Part II of Schedule I of the Act.

In the case of injuries specified in Part II of Schedule I of the Workmen's Compensation Act, the workman is entitled to compensation under Section 4(1)(c)(i) of the Act and the workman need not even examine the Doctor.

The only condition to claim compensation under Section 4(1)(c)(ii)of the Act in the case of injuries that are not covered under Part-II of Schedule-I of the Workmen's Compensation Act is that a qualified medical practitioner shall testify before the Commissioner about the loss of earning capacity.

11.In this case, admittedly, a Doctor was examined by the 1st respondent as a witness on his side and the Wound Certificate and X-ray as well as the Discharge Summary were marked.

It is relevant to extract the evidence of PW2-Doctor who examined the 1st respondent/workman and assessed the disability at 40%.

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cs;sd.

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mtUf;F ehd; t HA;fpa Cd rjtpfjk; 40% gFjp epue;ju Cdk; t HA;fpBdd;.

mJw;fhd Cdr;rhd;wpjH; k.rh.M.6, Ez;fjph;glk; k.rh.M.7 (3 thpir)"" 12.The Deputy
Commissioner of Labour has fixed the percentage of disability at 38%.

In my view, the Deputy Commissioner of Labour ought not to have reduced the
percentage of disability fixed by PW2-Doctor from 40% to 38%.

However, I am not disturbing the percentage of disablement fixed by the Deputy
Commissioner of Labour at 38%.

Since the workman has established that he has suffered permanent partial disablement, he is entitled to compensation as per Section 4(1)(c) read with Explanation II and Section 2(g) of the Workmen's Compensation Act.

13. It was the case of the appellant that the 1st respondent did not suffer fracture of L1, L2 and L3.

However, before the Deputy Commissioner of Labour, the appellant did not ask for examination of the 1st respondent by the Medical Board.

Having accepted the evidence of Doctor, now the appellant could not contend that the 1st respondent/workman is not entitled to compensation, on the ground that his driving licence was renewed subsequent to the accident.

Renewal of driving licence could have no bearing on the right of the 1st respondent to claim compensation under the Workmen's Compensation Act.

In case, if the 1st respondent was not able to get the licence renewed, then, it should be taken as permanent total disablement as defined under Section 2(l) of the Act and Section 2(l) is also extracted hereunder:- "(l)"total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement; Provided that permanent total disablement shall be deemed to result from every injury specified in Part 1 of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent, or more;]."

14. In that case, the appellant insurance company shall pay compensation for 100% disability.

But, the insurance company has been made liable only for 38% disability.

Therefore, the renewal of licence would not affect the right of the workman to get compensation.

By putting it differently, I would like to make it clear that if a workman who suffered injuries that resulted in certain percentage of permanent partial disablement and

thereafter, he was given promotion and earned something more than the amount which he earned at the time of accident, the employer could not deny payment of compensation under the Workmen's Compensation Act.

Such a plea of the employer is contrary to the very scheme of the Workmen's Compensation Act.

The Workmen's Compensation Act provides compensation for the injuries suffered during and in the couRs.of employment, if the injuries resulted in permanent partial or total disablement.

The Workmen's Compensation Act is a beneficial legislation.

If this plea of the employer is accepted, it would defeat the very purpose of the enactment.

15.In The Management, Sree Lalithambika Enterprises, Salem versus Kailasam reported in 1980 (1) MLJ480 this Court has considered a similar plea made by the employer and rejected the same.

It is relevant to extract the following paragraphs of the aforesaid judgment.

7."....The mere fact that a workman, who had suffered a schedule injury under the Act, is retained by the Management in the factory on the same scale of pay would not deprive the workman from getting compensation under the Act.

If such an interpretation is to be given to a beneficial enactment of this nature, it would deprive the workman from deriving any compensation for injuries suffered in the couRs.of his employment....."

".....For loss of injury suffered in the couRs.of his employment, but for the provisions of the Act, the affected worker could have maintained a claim for damages in a civil court and it is to enable such workman to secure compensation quickly and on a fixed basis a statutory imposition had been conceived of in the Act.

Hence, to contend that if the workman is enabled to earn the same salary, he would not be entitled to any compensation suffered during the course of his employment would defeat the main object intended to be achieved under this enactment."

"12..If a workman is not to be awarded compensation for injuries suffered in the course of his employment merely because he is still retained in the same job, it will be the most unjust manner of depriving such a workman of getting any compensation for what he had suffered at a time when he had contributed his labour in the factory..."

"..I could see no justification to hold as contended by Mr.Arunagirinathan, that when the workman is paid the same wages, in spite of the accident, he will not be entitled to any compensation under the Act.

When the intention is to compensate the workman for the loss of injury suffered by him during the course of his employment taking into account his earning capacity, it will be preposterous to hold that he will not get any compensation whatsoever; provided he continues to discharge the same type of job and also continues to earn the same wages."

13.For compensating for the injury suffered in the course of employment, a yardstick for working out compensation has been conceived of, and which depends on the loss of earning capacity of the workman in every establishment which he was capable of undertaking at the time of the accident, which in turn would be referable to the nature of injuries suffered by him.

What is conceived of under the Act as to form the yardstick for computation of compensation should not be so interpreted to hold that no compensation is payable to a workman who had suffered the injuries contemplated under the Act, on showing that he is continued to be kept in employment on the same wages."

16.In my view, the workman is entitled to claim compensation for the injuries that are covered under Part-II of Schedule-I as well as other injuries that are not covered under Part-II of Schedule-I and the only requirement in the case of non

scheduled injury is that the workman should establish the percentage of loss of earning capacity through a qualified medical practitioner.

Of course, the injuries should have been caused during the course of and out of employment and the injuries were not caused due to the negligence on the part of workman.

17. I am also fortified by the law laid down by the Full Bench of this Court in *A. Subramani versus Management of Tamil Nadu State Transport Corporation* and another reported in 2008-II-LLJ-86 (Mad). In that case, a learned single Judge directed the workman to return the compensation received under the Workmen's Compensation Act, on the ground that he was provided employment as per Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

On appeal, the judgment of the learned single Judge was reversed.

It was held by the Division Bench that the right of the workman to receive compensation could not deprive him to get alternate employment or promotion under Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Paragraph 9 of the judgment is extracted in this regard.

"9.

In any event, Section 72 of the Disabilities Act specifically provides that the provisions of the said Act are to be considered in addition to any other law or order and not in derogation of any law or order.

The main object of the Workmen's Compensation Act is to compensate the workman for his injury.

Merely because the workman has received the compensation for his injury under the Workmen's Compensation Act, it is not permissible for the employer to deny the benefits of Section 47 of the Disabilities Act, which contains a directive that the employer shall not dispense with or reduce in rank an employee who acquires

disability during the service.

The benefit envisaged under Section 47 of the Disabilities Act must be considered in addition to the benefits contemplated under the Workmen's Compensation Act.

Therefore, the learned single Judge was clearly in error in directing the appellant/workman to refund the compensation received by him under the Workmen's Compensation Act."

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

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.236/2008 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour).Madurai.

Consequently, M.P(MD)No.1 of 2015 is closed.

No costs.

NB2 20.02.2015 Index : Yes Internet : Yes To Commissioner for Workmen Compensation (Deputy Commissioner of Labour).Madurai.

D.HARIPARANTHAMAN, J.

NB2

ORDER

MADE IN CMA(MD)No.183 of 2015 AND M.P(MD)No.1 of 2015 DATED : 20.02.2015

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