

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 31.08.2018  
CORAM  
THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN  
C.M.A.No.3490 OF 2013

M.Venugopal

...Petitioner

-Vs-

1.N.Natarajan

2.The Oriental Insurance Co.Ltd,  
No.8, Esplanade,  
Chennai - 600 108.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, to set aside the award dated 03.01.2011 and made in W.C.No.212/2008 on the file of the Deputy Commissioner of Labour.

For petitioner : Mr.F.Terry Chellaraja

For Respondents : R1- Exparte

Mr.S.Arunkumar for R2

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the award made in W.C.No.212 of 2008 passed by the Deputy Commissioner of Labour-I, Chennai under section 30 of the Workmen's Compensation Act. This Civil Miscellaneous Appeal has been admitted in the following questions of law:-

"a) Whether the Learned Deputy Commissioner of Labour - I is right in fixing the disability of the injured as 20% instead of 35% as assessed by the Doctor?

b)Whether the Learned Deputy Commissioner of Labour - I, is right in not fixing the earning capacity as 100%

c)Whether the Deputy Commissioner of Labour - I, is right in not awarding interest at the rate of 12% p.a from the date of accident excluding 30 days from the date of accident under sec.4 (A) of the W.C. Act, while the award was passed in merits?

d)Whether the Deputy Commissioner of Labour -I, is right in calculating the income of the injured. As per G.O.(2) D 19, Labour and Employment Department (J1) dated 20.05.2004 the income was fixed as Rs.5223/- per month whereas the Deputy Commissioner of Labour -I fixed the income of the injured as Rs.4,000/- per month without any basis?"

2.The case of the appelleant/petitioner is that he was working under the first respondent namely Mr.N.Natarajan, Engineering Contractor,Ramalinga Chetty Street, Dharmapuri District who undertake the job of painting work in D.G.P.Office Buildings, Mylapore. The appellant sustained greivous injuries while he was painting the third floor in the northern side of the said building. When he was getting down for having his morning tiffen, the said rope was broken from 15 meters above the ground level he fell down, due to which sustained head injuries and also injuries in entire face while, his 4 teeth were broken. Further he sustained a fracture in the left hand and was immediately shifted to the Government General Hosiptal, Chennai-3, wherein he was admitted and taken treatment. He had also taken treatment for his dental problems as well as for the eye problems. After the said accident the petitioner could not work as earlier due to the injury sustained and he could not continue his job of painting work further and since the first respondent who was the employer was aware of the accident and the facts he did not issue any legal notice to him. The petitioner submits that he used to get a sum of rupees 8,000/- as salary per month and there was no dispute raised by respondents regarding the same. He would also submit that the FIR has been registered in D-5, Marina Police Station, Chennai, in crime No.990/2008. As per the policy of workmen compensation policy taken by the first respondent in policy No.453404/48/2008/555 which is valid from 13.9.2007 to 12.9.2008, the petitioner is entitled to get compensation from the first respondent for the injuries sustained by him, while he was engaged by the 1<sup>st</sup> respondent.

3.At the time of proceedings before the labour court the first respondent, Engineering Contractor did not file any counter and he did not appear for the proceedings as such he was set ex-parte in the Labour Court. The second respondent namely the Oriental Insurance Company Limited had filed a counter wherein, they denied the relationship of the employer and the employee between the petitioner/appellant and the first respondent. Hence, there is a denial, that no proof of relationship between the employer and the employee is produced, the appellant did not come under the relationship of Workmen Compensation. Further, there was no proof to show at that point

of time of accident, the appellant was working under the 1<sup>st</sup> respondent.

4. Even though, the appellant filed eight documents on his side, there was no document filed by the respondents. FIR, Discharge Summary and the Dental Hospitals documents and Eye Hospitals documents and the Out patient of the Government Hospital, Insurance Policy, copy of X-ray and then report of the X-ray has been filed by appellant. The labour court had correctly observed and held that the petitioner had been working as the Workman under the first respondent since there is no denial from the first respondent. It has been accepted as the appellant was working under the first respondent and the said accident has occurred which is arising out of and during the course of the employment. The petitioner would further contend that the Labour Court had also given a finding that from the evidence of the appellant he was not able to see properly due to the injury sustained and he has got difficulty for doing day to day work and he was not able to eat properly due to broken teeth and he has not able to get salary as he used to get earlier. The dental doctor namely Mr.Kalkura has filed an affidavit stating that he has examined the petitioner i.e., appellant Venugopal along with the documents, as he had given treatments for the injuries sustained by him, while he fell down from the top of the third floor of the building working and he was inpatient in Government General Hospital, Chennai and outpatient in TamilNadu Government Dental hospital for dento alveolar with it upper four teeth due to above mentioned accident resulting in loss of teeth and deranged occlusion causing mastigatory disfunction. Due to which, he sustained permanent disability which he considered as 25% and another doctor namely Dr.Mr.Rajapa has also given a statement that the appellant's Eye Vision has been damaged and he has also given 25% disability. The averments of respondents that even tumour may lead to cancer and the tumour can affect the vision cannot be accepted by this Court as no such evidence produced by the respondents. The labour Court has considered the said factors and his loss of earning capacity has been fixed at 40% and the age of the appellant is taken as 50 as per the discharge summary and has also taken the basic salary as fixed by the Government as Rs.4,000/- and accordingly Rs.4,000 has been fixed and calculated the same and awarded the amount of compensation as Rs.1,46,966/-. The second respondent was directed to pay the same and to be deposited within a period of 30 days and the appellant is entitled to get 12% interest from the date of filling of the claim.

5. Regarding the substantial question of law C which alone has to be considered as per the request of the appellant, this Court finds that the Labour Commissioner has not considered the

case as the exclusion of 30 days for filing and he ought to have awarded interest at 12% from the 31 day to till the date of paying the compensation, instead he has passed an order that if the respondent fails to pay the same within 30 days, the respondent has to pay the interest from the date of filing till the date of deposit.

6. This Court accepts the case of the appellant and modifies the order passed and directs the respondent to pay interest from the date of filing of the claim petition to till the date of depositing the compensation amount.

To the above extent, the Civil Miscellaneous Appeal is allowed in favour of appellant. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mp/ssb

To

The Deputy Commissioner of Labour Court,  
Chennai.

+1 cc to Mr.S.Arunkumar, Advocate Sr.No.60993

+1 cc to Mr/s.M.Malar, Advocate Sr.No.60376

C.M.A.No.3490 OF 2013

RK(CO)

CSL/25.03.2019

सत्यमेव जयते

WEB COPY