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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
24.04.2026	05.06.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CMA No. 3553 of 2021

Raja

..Appellant(s)

Vs

1. Harikrishnan

2. ICICI Lombard General Insurance Company Ltd.
   No.140, 3rd Floor,
   Nungambakkam High Road,
   Chennai 600 034
   Now Shifted To
   Harihant Plaza 1st Floor, No, 84 and 85
   Walltax Road, Chennai 600 003

..Respondent(s)

PRAYER:- Civil Miscellaneous Appeal, filed under Section 30 of the Workmen Compensation Act, 1923, to set aside the order dated 03.12.2019 in WC.No.239/2016 on the file of the Joint Commissioner for Labour - II (Commissioner for Employees Compensation - II), Chennai 600 006.

For Appellant(s): Mr.A.G.F.Terry Chella Raja
for M/s.A.Shanmugaraj
S. Agalya

For Respondent(s): M/s.B.Siva Kollapan for R2
R1 – Notice dispensed with vide Sr.No.109428, dated 02.12.2021

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JUDGMENT

The present Civil Miscellaneous Appeal has been filed seeking to set aside the order dated 03.12.2019 in W.C.No.239 of 2016 on the file of the Joint Comissioner for Labour-II (Comisssioner for Empolyee's Compensation-II), Chennai.

2. The facts giving rise to the present case are that the petitioner, aged about 29 years, was employed by the first respondent as a van driver on daily wages, receiving Rs.600/- per day along with a daily batta of Rs.100/-. On 29.05.2015, pursuant to the instructions of the first respondent, the petitioner loaded the goods into the van bearing Registration No.TN 22 BQ 6733 and proceeded towards the designated destination in the course of his employment. While travelling on the Chennai–Trichy National Highway near Eranji Village, Villupuram District, the said van met with an accident involving another lorry, as a result of which the petitioner sustained grievous multiple injuries, including blood clots in the brain and right chest, and fractures in both cheek bones. He was immediately rushed to the hospital, where he underwent inpatient treatment from 29.05.2015 to 25.06.2015. Thereafter, the petitioner continued to undergo treatment for his multiple injuries under various medical practitioners.

3. Subsequently, the petitioner was assessed with 65% permanent disability, which rendered him incapable of continuing his occupation as a driver,

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thereby resulting in 100% loss of earning capacity. Consequently the petitioner filed a claim petition under W.C.No.239 of 2016 before the Joint Commissioner for Labour, seeking compensation of Rs.20,00,000/- against the first respondent, his employer, and the second respondent, the insurer of the van bearing Registration No.TN 22 BQ 6733.

4. Whereas the second respondent, in its reply statement, contended that the accident did not occur during the course of the petitioner's employment under the first respondent or while he was driving the van bearing Registration No. TN 22 BQ 6733. The second respondent further denied the petitioner's claim that he was employed as a driver under the first respondent on a daily wage basis for Rs.600/- along with a batta of Rs.100/- per day. Accordingly, it was contended that the second respondent is not liable to pay any compensation to the petitioner.

5. Based on the pleadings from both sides the learned Comisssioner for Empolyee's Compensation had framed following questions which needs to decided

1. *Whether the petitioner sustained the accident in the course of and arising out of his employment under the 1st respondent? Whether the permanent disability and consequent loss of earning capacity suffered by the petitioner arose out of the said accident?*
2. *What is the quantum of Compensation to which the Petitioner*

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is entitled to?

3. *Whether the 2nd respondent is liable to pay the Compensation to the Petitioner?*

6. The petitioner had examined himself and one Dr.Danasekaran as PW1 and PW2 respectively, and had marked Ex.A1 to Ex.A22 as the Petitioner side's evidence.

7. The learned Commissioner for Employees' Compensation, after hearing both parties and upon perusing the materials available on record, decided the aforesaid issues *vide* judgment dated 03.12.2019. Insofar as Question No.1 is concerned, the learned Joint Commissioner, upon considering the depositions of PW2, the doctor who had deposed the severity of the injuries sustained by the appellant and the disability suffered by him and the relevant documentary evidence marked as Ex.A1 to Ex.A22, held that the accident had occurred during the course of and arising out of the petitioner's employment under the first respondent. The learned Joint Commissioner further held that the petitioner had suffered 65% permanent disability, resulting in 65% loss in the earning capacity. Accordingly, Question No.1 was answered in favour of the petitioner.

8. Insofar as the Question Nos.2 and 3 are considered, the learned Joint Comissioner after considering the factors such as age, disability percentage and salary had calculated the quantum of compensation. Since the petitioner had

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failed to prove his claim that he was earning Rs.700/- per day (Rs.600/- as daily wages and Rs.100/- as daily batta), the learned Commissioner fixed the petitioner's monthly wages at Rs.8,000/- and accordingly determined the compensation payable to be at Rs.6,54,950/-. The learned Commissioner further held that, as the first respondent's vehicle was insured with the second respondent on the date of the accident, therefore the second respondent was liable to pay the aforesaid compensation. Accordingly, by order dated 03.12.2019, the learned Commissioner directed the second respondent to pay a sum of Rs. Rs.6,54,950/- to the petitioner together with interest at 12% per annum. Aggrieved by the said order, the petitioner had preferred the present Civil Miscellaneous Appeal seeking to set aside the aforesaid award and to enhance the compensation

9. Heard Mr.A.G.K.Terry Chella Raja learned counsel appearing on behalf of Mr.A.Shanmugaraj learned counsel for the appellant and Mr. B.Siva Kollapan learned counsel appearing on behalf of the 2nd respondent.

10. Mr.A.G.K.Terry Chella Raja, the learned counsel for the appellant submits that the impugned order dated 03.12.2019 is contrary to law, facts and the weight of evidence available on record. He contends that the learned Joint Commissioner ought to have fixed the monthly wages of the injured appellant at Rs.10,286/-, in accordance with the Minimum Wages Act, instead of arbitrarily fixing the same at Rs.8,000/- per month. The learned counsel further submits that the learned

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Joint Commissioner ought to have treated the loss of earning capacity of the appellant as 100%, since the appellant is no longer capable of performing his normal work, namely continue with his occupation as a driver. In support of the said contention, reliance was placed upon the judgments reported in ***1976 ACJ 141, 2010 MLJ 418(SC)*** and ***2012(2) TN MAC 750***. He further contends that the learned Joint Commissioner ought to have computed the compensation to a tune of Rs.12,95,542/- (60/100 × 209.92 × 10,286), instead of restricting the same to Rs.6,54,950/-. In view of the above, the learned counsel prayed that the order dated 03.12.2019 be set aside and the compensation be duly enhanced.

11. *Per Contra*, Mr. B.Siva Kollapan learned counsel appearing on behalf of the 2nd respondent/ Insurance Company would submit that the learned Joint Commissioner has properly appreciated both the oral and documentary evidence on record and has awarded just and reasonable compensation in accordance with the provisions of the Employees' Compensation Act. He contends that the petitioner had failed to produce any acceptable documentary evidence to establish that he was earning Rs.700/- per day, namely Rs.600/- as daily wages together with an additional batta of Rs.100/- per day. Therefore, the fixation of the petitioner's monthly wages at Rs.8,000/- by the learned Joint Commissioner itself is more than sufficient and does not warrant any enhancement.

12. He further submits that the medical evidence on record, namely, the

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disability certificate marked as Ex.A22 only assessed the petitioner's permanent disability at 65% and therefore the learned Joint Commissioner was justified in adopting the same percentage for determining the loss of earning capacity. It is further contended that the appellant has not established by any evidence that he had suffered 100% functional disablement so as to consider the loss of earning capacity to be 100%. Therefore the learned counsel submits that the compensation awarded by the learned Joint Commissioner is proper, reasonable and does not warrant an interference from this Court. In view of the above he seeks the present civil miscellaneous Appeal to be dismissed.

13. Considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

14. From the arguments made and the materials perused, this Court is of the view that the following issues had arisen for consideration.

a) Whether the appellant is entitled for compensation on the basis of the salary claimed by him?

b) Whether the Joint Commissioner was correct in computing the loss of earning capacity at 65%?

Issue (a):-

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15. Even though, the appellant had claimed that he had been paid a daily wages of Rs.600/- apart from batta of Rs.100/- by his employer, a perusal of Ex.A16, a letter of the employer which was a reply notice given to the appellants claim, it could be seen that he had disputed the daily wages that had been paid to the appellant. Further, the appellant had not produced any evidence whatsoever to substantiate that his salary was actually as that claimed by him. In such view of the matter, the issue is answered against the appellant and this Court finds no reason to interfere with the findings and reasonings of the Joint Commissioner in fixing the salary at Rs.8,000/- per month.

Issue (b):-

16. It is the claim of the appellant that in view of the accident, he had suffered disability and the said disability had been assessed at 65%. but, however, due to the accident, he had lost his earning capacity which would be 100% and that the Joint Commissioner had failed to note the loss of earning capacity.

17. On the other hand, the learned counsel appearing for the second respondent would submit that the disability suffered by the appellant does not form part of any of the items in the Schedule and by referring to Section 4 Sub Section 1 Clause C(ii), he would submit that when an injury not specified in the

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Schedule-1, then the percentage of compensation payable in case of the permanent total disablement would be proportionate to the loss of earning capacity as assessed by a qualified Medical practitioner. He would submit that even though, the petitioner had examiner PW2, a Doctor, PW2 had only spoken about the percentage of the disability but had not assessed the loss of earning capacity of the appellant and hence, he had contended that there was no infirmity in adopting the proportionate loss of earning capacity on the disability that had been suffered by the appellant.

18. In that context, it could be useful to refer Schedule-1 which had been made in reference to Section 2(1) and (4) of the Act. It would also be pertinent to note that the objects and reasons for amending the Schedule by way of substitution by Act 64 of 1962 with effect from 01.02.1963 was that the Schedule-1 was outmoded and not in conformity with the present day standards of assessing disabilities and therefore, the Schedule as followed in the National Indusrance (Industrial Injuries) Benefit Regulations 1948 of the United Kingdom was adopted. Turning back to Section 2, it should be noted that Section 2 opens with a mandate that in the Act the following definitions are made unless there is anything repugnant in the subject or the context. Clause (l) of Sub-Section 1 of Section 2 defines total disablement as temporary or permanent in nature in capaciting a workmen for all work which he was capable of performing at the time of the accident resulting in disablement. The Proviso

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appended to the said definition would indicate that for an injury specified in Part-2, the aggregate percentage of loss in earning capacity as specified in Part-2 would be taken. Section 4 envisages that subject to the Provisions of the Act, the amount of compensation would be paid as indicated therein.

19. Clause (c) would envisage that for the injuries to part-2 of the Schedule-1, the percentage of compensation payable in case of permanent total disablement, the loss of earning capacity should be as shown therein. However, under Sub-Clause(2), if the injury was outside the Schedule, then the percentage of compensation payable in the case of permanent total disablement is proportionate to the loss of earning capacity which should be assessed by a qualified medical practitioner.

20. Explanation-1 appended would indicate that if multiple injuries had arisen and had been caused in the accident then the compensation payable under each of the head shall be aggregated and it shall not exceed the amount which would have been payable if permanent total disablement had resulted in the said injuries.

21. Explanation-2 envisages that for Sub-Clause 2 of Clause C, a qualified medical practitioner should have due regards to the percentage of loss

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of earning capacity in relation to different injuries specified in Schedule-1.

22. In that context, in analysing the evidence of PW2, it is conclusive that the appellant who had suffered physical disability of 65% in view of the injuries had suffered functional disability of both his right limbs and also has difficulty in speech and had clearly spoken about the injury to be a permanent injury. The cross-examination done by the second respondent do not discredit either the percentage of the injury or the nature of the injury and disablement substantiated in the chief of PW2.

23. The Schedule have been amended as early as in the year 1962 by adopting a Schedule of a Foreign nation. The Parliament had not taken any steps to revisit such a Schedule. Admittedly, the appellant herein had been found to be working under the first respondent and the findings of the Joint Commissioner has neither been challenged by the first respondent or the second respondent and had put the issue to rest from their side.

24. As indicated above, the definition of Section 2 is to be read in the subject and context if anything is repugnant to the definitions. This would mean that the Schedule to the Act would only be a guiding factor in assessing the loss of earning capacity of an employee.

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25. In such a view, this Court is of the view that the findings and the reasonings of the Joint Commissioner to assess the earning capacity of the appellant to be only 65% as proportionate to the disability certificate would have to be necessarily be interfered with. As already found from the evidence of PW2, the appellant had suffered a disability due to the accident in which he had lost his ability to use both his limbs on the right hand side and also has a difficulty in speaking which would only mean that he had lost his ability to eek out a livelihood. Further, the Act is a beneficial legislation which had been enacted to compensate the workmen in the event of accidents during the course of the employment. In the present case, it has been proved that the accident had occurred during the course of the employment and this Court for the findings and the reasonings indicated above holds that the appellant would be entitled for 100% compensation towards his earning capacity for the permanent disability that he had suffered.

26. For the aforesaid reasons, the order of the Joint Commissioner stands modified as herein, 60/100 X 209.92 X 8,000 X 100% = 10,07,616.

27. Accordingly, the Civil Miscellaneous Appeal stands allowed as indicated above. Consequently, connected miscellaneous petition stands closed. However, there shall be no order as to costs.

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05.06.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

GBA

To

1.The Joint Commissioner for Labour - II
(Commissioner for Employees Compensation - II),
Chennai 600 006.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.

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K.KUMARESH BABU, J.

GBA

A Pre-delivery judgment made in
CMA No. 3553 of 2021

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