

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2015

CORAM :

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

CMA.No.1049 of 2009
and MP.No.1 of 2009

The New India Assurance
Company Ltd., Erode. ... Appellant

Vs

1.Sampath rep by his mother and next friend Mrs.Parvathi
2.Subramaniam ... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923 against the award dated 30.04.2008 passed by the Commissioner for Workmen Compensation, (Deputy Commissioner of Labour, Salem) in WC.No.42 of 2004.

For Appellant : Mr.Michael Visuvasam.
For Respondents : Mr.V.Kumaravelan.

JUDGMENT

The insurer who is the second respondent before the Commissioner for Workmen Compensation is the appellant herein.

2.This Civil Miscellaneous Appeal is filed against the award of compensation of Rs.3,99,771/- to the claimant represented by his mother for the injuries sustained by him in the accident occurred in the course of his employment, under the first respondent/employer.

3.The parties are referred to as per their rank in WC.No.42/2004.

4.The Civil Miscellaneous Appeal is admitted on the following substantial questions of law :

(i)Is the finding of the learned Deputy Commissioner of Labour regarding the alleged employment of the 1st respondent as a 'cleaner' under the 2nd respondent/I opposite party in the lorry bearing registration number TMS 1861 and that the alleged accident had occurred in the course of and arose out of the alleged employment, simply based on the FIR recorded after a delay of seven months and based on other criminal court records is sustainable in law ?

(ii)Can the learned Deputy Commissioner of Labour decide the factum of occurrence on the basis of the evidence of a witness who did not see the occurrence?

(iii)Is the finding of the learned Deputy Commissioner of labour regarding the alleged accident, without considering the evidence on record placed by the appellant/II opposite party questioning the genuineness of the alleged accident and the employment is sustainable?

(iv)Was the learned Deputy Commissioner right in granting compensation considering the fact that the age of the I respondent/Applicant was 14 years and a child labour?

5.The appellant herein has in this appeal questioned the correctness of the award by denying the factum of employment of the

claimant under the first respondent and the occurrence of the accident in the course of such employment.

6.The commissioner for workmen's compensation on the basis of Ex.P1/FIR, Ex.P2/accident register, Ex.P3/wound certificate, Ex.P9/report and Ex.P10/final report and Ex.R2/memorandum dated 26.10.2004 issued by the Inspector General of Police, Ex.R3/RCS No.8/2005 filed before the concerned Judicial Magistrate court, arrived at a conclusion that the claimant on the date of the accident at about 7pm on 16.03.2003, employed as cleaner in Tanker Lorry belonging to the first respondent and the accident occurred in the course of his employment. Though Ex.P1/FIR was registered belatedly, Ex.P2/accident register dated 16.03.2003 would show that the injured was immediately after the accident taken to Erode Government Hospital and thereafter admitted in private hospital at Erode on 20.3.2003 for further treatment. It is further stated, in Ex.P2 that the accident occurred when the lorry driver came in reverse and hit a bicycle with acid sulphur. The driver of the lorry belonging to the first respondent was also charge sheeted for the offences under sections 279 and 338 IPC and he was by Ex.P9 judgment dated 12.02.2004 found to be guilty of the offences referred to above and was sentenced

to pay fine. As a matter of fact, the second respondent/insurance company vide Ex.R2/memorandum referred the case to Superintendent of Police, Erode to ascertain the genuineness of the claim and to register a case regarding false insurance claim and for holding investigation and the complaint was after due investigation closed as mistake of fact and the interference to be drawn is that the insurance claim made for the accident occurred is not found to be false one.

7.The combined appreciation of the entire documents would justify the findings rendered by the Commissioner of Workmen Compensation regarding the employment of the claimant as cleaner on the date of the accident under the first respondent and the manner of the accident and the injury caused to the claimant in the accident while he was assisting the driver in taking reverse of the vehicle in question and the findings so rendered by the Commissioner for Workman Compensation on the basis of such materials, in my considered view warrants no interference by this Court.

8.Even assuming it to be true, that the claimant/injured on the date of the accident not employed under the first respondent, he is still

entitled to claim compensation as third party and the insured-cum-owner is for the act of negligence of the driver of the vehicle in question resulting in the accident, vicariously liable to answer the claim of the injured and the insurer is liable to indemnify the owner for the liability incurred. Thus, the claimant/injured either under Workmen's Compensation Act or under Motor Vehicles Act is entitled to seek compensation from the insured/owner and the second respondent/insurer cannot be permitted to question the claim for compensation made by the claimant.

9.Regarding the quantum of compensation, the injured admittedly lost vision in both the eyes and suffered facial disfiguration, due to which he is fully depending upon others for his routine day to day work. It goes without saying that the nature of disability sustained by the claimant is such, he may not able to do any job and the degree of loss of earning capacity must be assessed as 100%, as such, the commissioner of Workmen Compensation having regard to his age, monthly income, as cleaner and the extent of his functioning disability, applied the correct factor and determined the compensation due to the injured as Rs.3,99,771/- and no reason at all is made out to modify or reduce the same.

10. In the result, the civil miscellaneous appeal is dismissed. The time for deposit of award of compensation with the interest at 12%p.a. on completion of 30 days from the date of accident till date of deposit is four weeks from the date of receipt of copy of this judgment. On such deposit of the amount, the claimant is permitted to withdraw the same on due application. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2015.

Internet : Yes/No
Index : Yes/No
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To
The Commissioner of Labour, Salem

K.B.K.VASUKI, J.,

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