

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.1001 of 2015
and
M.P.No.1 of 2015

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai,
Chennai-600 002. ... Appellant/Opposite Party

Versus

A.Ponnalagan ... Respondent/Application

Prayer: Civil Miscellanies Appeal has been filed under Section 30 of the Workmen's Compensation Act, against the award dated 31.01.2013 and made in W.C.No.98 of 2008 on the file of the Deputy Commissioner of Labour -I, (Commissioner for Workmen Compensation), Chennai-600 006.

For Appellant : Mr.M.Chidambaram

For Respondent : Mr.R.Dhamodaran

JUDGMENT

Questioning the liability as well as the quantum of compensation dated 31.01.2013 and made in the Claim Petition in WC No.98 of 2008 on the file of the Deputy Commissioner of Labour- I(Commissioner for Workmen Compensation), Teynampet, Chennai, the appellant /Transport Corporation has preferred this Appeal under Section 30 of the Workmen Compensation Act.

2. This Appeal was admitted based on the following three substantial questions of law:

(i)Whether the respondent/employee has followed the procedure when the alleged accident was held in the Depot on 28.09.2006?

(ii)Whether the respondent has raised any objection when he received Medical reimbursement amount of Rs.11,993/- out of the claim of Rs.15,991.75?

(iii)Whether Ex.R3(General Dairy) is genuine or a created one?

3. Heard Mr.M.Chidambaram, learned counsel appearing for the appellant/Transport Corporation and Mr.R.Dhamodaran, learned counsel appearing for the respondent.

4. As it is revealed from the records the respondent/claimant had filed a claim petition in WC.No.98 of 2008 on the file of the Deputy Commissioner of Labour -I (Commissioner for Workmen Compensation), Chennai, claiming a sum of Rs.3,00,000/- for the injuries sustained by him over his left eye during the course of his employment under the appellant /Transport Corporation.

5. The appellant /Transport Corporation had contested the claim petition by filing their counter statement. Including the respondent/claimant, one Dr.Rajappa, was examined as PW2. During the course of their examination, 8 documents were exhibited. On the other hand, two witnesses were examined on behalf of the appellant/Transport Corporation and during the course of their examination, six documents were exhibited.

6. On appreciation of the evidences both oral and documentary, the Deputy Commissioner of Labour -I (Commissioner for Workmen Compensation), Chennai, had proceeded to award a sum of Rs.1,43,683/- directing the appellant/Transport Corporation to pay this amount through a Demand Draft within a period of 30 days in the name of the Deputy Commissioner of Labour -I (Commissioner for Workmen Compensation), Chennai, failing which 12% interest would be calculated on the award amount from the date of petition.

7. Challenging the quantum of compensation as well as the liability, the appellant /Transport Corporation stands before this Court with this Civil Miscellaneous Appeal.

8. It is revealed from the records that the respondent/claimant had entered into service under appellant /Transport Corporation on 15.06.1982. He had put in 25 years of service in the appellant /Transport Corporation at Vyasarpadi Depot. During the course of his employment, the petitioner had to dismantle the Axle assembly and to fix R.C. Front Axle. While doing the work of fixing the S. Cam Shaft in front axle, a hammer stroke was given, which resulted in breaking and a particle (Small one) from S. Cam Shaft and pierced into his eye and caused injury to his left eye. The respondent/claimant, due to the said injuries, had lost his left eye vision to the extent of 100%. Soon after the accident, he was taken to Hospital on 28.09.2006 and a surgery was performed on the next day i.e., on 29.09.2006 and subsequently, he was discharged on 30.09.2006. He was not able to do any work for about two months from 30.09.2006. Hence, claiming a sum of Rs.3,00,000/- he had

filed the claim petition in W.C No.98 of 2008 on the file of the Deputy Commissioner of Labour-I(Commissioner for Workmen Compensation), Chennai .

9. The appellant /Transport Corporation had made a strenuous contest by filing their counter statement saying that no such incident viz., injury was caused to the claimant/respondent's left eye on 28.09.2006, while he was working at Vyasarpadi Depot. They have also contended that according to the claimant/respondent, the incident was taken place on 28.09.2006 but he had filed the claim petition before the concerned Authority on 26.09.2007 that too after the receipt of reimbursement of Rs.11,993/- dated 17.08.2007 from the Management for the eye operation done at Dr.Agarwal's Eye Clinic.

10. Further, the respondent/claimant had contented that the Discharge Summary issued by Dr. Agarwal's Eye Hospital dated 30.09.2006 would go to show that the condition of eye was good at the time of discharge.

11. But, according to the appellant/Transport Corporation, the contention of the claimant/respondent that he had lost his earning capacity to the extent of 100% was not sustainable. They had also contended that the claimant/respondent was not entitled to get any amount towards compensation under the Workmen Compensation Act as he had received the Medical reimbursement of Rs.11,993/-(75%) as against his clam of Rs.15,991.75.

12. Insofar as the claim petition is concerned, the claimant/respondent has not stated the exact date on which the accident was taken place. It is to be noted here that he has only stated that he was admitted on 28.09.2006 and a surgery was performed on 29.09.2006 and for about two months he was not able to attend his duty. According to him, he had lost vision of his left eye to the extent of 100%. It is not in dispute that the respondent/claimant had received a sum of Rs.11,993/- towards Medical reimbursement vide Cheque No.090734 dated 23.07.2007 being 75% of the Medical expenses incurred by him as against the claim of Rs.15,991.75. The Deputy Commissioner of Labour-I(Commissioner for Workmen Compensation), Chennai, while discussing the second issue had observed that PW2, Dr.Rajappa had deposed that on 28.09.2006, he had examined the respondent/claimant as he had sustained injuries over his left eye due to the fall of broken particle(small one) from S. Cam shaft. According to him, the disability suffered by the respondent/claimant over his left eye would be determined @ 40%.

13. The Deputy Commissioner of Labour-I (Commissioner for Workmen Compensation), Chennai had also determined that the respondent/claimant had suffered the loss of earning capacity to the extent of 40%. Further, as per the Workmen Compensation Act, a sum of R.4000/- was determined as monthly income of the respondent /claimant. Accordingly, he had awarded a sum of Rs.1,43,683/- ($60/100 \times 4000 \times 149.67 \times 40/100$), directing the appellant/Transport Corporation to pay this amount through a Demand Draft in the name of the Deputy Commissioner of Labour-I (Commissioner for Workmen Compensation), Chennai, within a period of 30 days from the date of receipt of a copy of this order.

14. This Court after perusal of the award of the Deputy Commissioner of Labour-I (Commissioner for Workmen Compensation), Chennai dated 31.01.2013 alongwith the relevant materials available on record finds that the award of the Commissioner is fair and just and does not require any interference of this Court.

15. Keeping in view of the above fact, the Appeal filed by the appellant/ Transport Corporation is dismissed. The award of the Deputy Commissioner of Labour-I (Commissioner for Workmen Compensation), Chennai is confirmed. No costs. Consequently, connected miscellaneous petition is closed. The respondent/claimant is at liberty to withdraw the entire award amount alongwith proportionate accrued interest and costs.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner of Labour -I,
(Commissioner for Workmen Compensation),
Chennai-600 006.

Copy To : The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.R.Dhamodaran, Advocate, S.R.No.37742
+1cc to Mr.M.Chidambaram, Advocate, S.R.No.37695

C.M.A.No.1001 of 2015
and M.P.No.1 of 2015

RJ (CO)
CA (29/09/2016)