

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.11.2017
CORAM :

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

C.M.A.No. 2964 of 2011
in M.P.No. 1 of 2011

T.R.Rajan

... Appellant/Applicant

Vs.

1. The Management,
Mango Range Tea Factory,
Parry Agro Industries Limited,
Caroline Estate, Mango Range,
Nilgris.

2. The National Insurance Company Ltd.,
Divisional Office-II
Coimbatore.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act, to set aside the dismissal order passed in W.C.No.3 of 2007, dated 19.03.2010 on the file of the Hon'ble Deputy Commissioner of Labour, Coonoor and award compensation of Rs.5,00,000/- (Rupees Five lakhs only) with interest from the date of Petition.

For Appellant : Mr.V.SivaKumar
for Mr.Senthilnathan

For R2 : M/s.D.Abdullah
For R1 : No appearance

O R D E R

Aggrieved over the rejection of claim by Commissioner of Workmen's Compensation/ The Deputy Commissioner of Labour, Coonoor, the claimant is before this Court.

2. According to the claimant, while he was working in the Tea Processing Machine, cleaning the dust, he suffered a crush injury over his left hand in the conveyor belt attached to the Machine, thereby, he suffered fracture, with radial nerve palsy which resulted in loss of usage of his fingers and wrist. According to him, he has lost his earning capacity due to the accident. The disability was assessed as 60% and he has suffered

100% functional disablement. Whereas, on the basis of disability certificate given by the doctor and fitness certificate to join duty, the authority has decided that the injury is only temporary in nature and the claimant employee is not entitled to compensation, as he was reinstated by the employer. The respondent management and the insurance company have also taken various defences including negligence of the employee in discharging the duties contravening the safety procedures instructed to him. But on a reading of order passed by the authority below, the authority has found that the accident has occurred, the claimant has suffered an injury and also 60% disability, but, ultimately has dismissed the claim petition on the ground that the injuries suffered are only temporary in nature and the employee was reinstated.

3. In the instant case, the occurrence of accident is admitted and the injury suffered by the employee is also admitted. Whether the accident was due to the negligence of the employee and whether it has reduced down the efficiency of his earning capacity are all the issues which are not decided by the authority. There is ample evidence to show that a steel plate was fixed and still remains in his hand. The management has taken a stand that alternative employment as per standing order would be provided to the Workman. The workman claims that the injury caused 100% functional disablement and his left hand cannot be used further. It is stated that the workman was reinstated in service, but to which post is not pleaded. Whether the injury falls under Schedule I, Part I, Serial No.2 and part-II, serial No.4 or not decided. The Commissioner has conveniently taken shelter under a medical certificate that the injury is temporary in nature, but has not adverted to the issue of disability and probability of recovery of functioning of the left hand. Even in the cases of non-schedule injuries, the workman is entitled to get compensation for the disability suffered. The finding of the authority is superfluous. Therefore, the vital issues go unanswered. In that circumstance, this court considers it fit to set aside the order and to remand the matter to the authority under Workmen's Compensation Act for framing appropriate issues and to decide the matter after affording opportunity to both the sides to let in evidence both oral and documentary. Further, a direction is issued to the Commissioner of Workmen's Compensation to complete proceedings within a period of three months from the date of receipt of a copy of this order.

4. With above observation, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

bsm
To

1.The National Insurance Company Limited
Divisional office-II, Coimbatore

2.The Deputy Commissioner of Labour
coonoor

3.The Section Officer
VR Section High Court, Madras

+1 cc to Mr.S.Senthilkumar Advocate sr 81659

+1 cc to Mr.D.Abdullah Advocate sr 81291

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