

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.1656 of 2001

K.Vijayan ... Appellant/Claimant

Vs.

1.R.G.Varadhan ... 1st Respondent /Respondent

2.The United India Insurance Co. Ltd.,
Katpadi Road,
Vellore - 632 001, ... 2nd Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act against the order dated 24.9.2001 in W.C.No.29 of 1999 on the file of the Commissioner for Workmen's Compensation I (Deputy Commissioner of Labour I), Chennai.

For Appellant : Ms.M.Srividhya
for Mr.N.S.Sivakumar
For Respondents : No Appearance

JUDGMENT

This appeal is preferred by the appellant/petitioner in W.C.No.29 of 1999 before the Commissioner of Workmen Compensation-I (Deputy Commissioner of Labour-I), Chennai.

2. According to the appellant he was working as a driver under the first respondent and was driving a lorry bearing registration No.KA01-5769. On 12.07.1998, while he was driving the said lorry, he stopped the lorry to help himself with a cup of tea. While so, another lorry bearing registration No.AP26-V-5767 dashed against him owing to which he suffered fracture to his left leg and was admitted in the hospital. Hence, he invoked the jurisdiction of Workmen Compensation Act and sought a compensation of Rs.5,00,000/-.

2. Opposing the said claim, the second respondent/Insurance Company defended the action on two grounds :

(a) the manner of the accident as contended by the appellant was not correct as there are certain internal contractions as to how the accident took place;

(b) that the appellant did not possess a valid driving licence at that relevant time

3. The Commissioner under the Workmen Compensation Act has decided the issue in favour of the petitioner/appellant and has held that he was an employee of the first respondent and had suffered injury while in the course of his employment. As to second aspect, the Commissioner has held that the appellant did not possess a driving licence and he arrived at this finding essentially due to the fact that the employee did not produce it even when he was required to produce it under a notice served on him for the purpose. It was on this head the Commissioner absolved the liability of the Insurance Company.

4. Neither of the respondents appeared before this Court despite being served with notice.

5. The only point to be considered is whether the Insurance Company was liable on the basis of the Commissioner's inference that the appellant did not possess a valid driving licence. As indicated earlier that the driver did not possess a valid driving licence was only an inference drawn from the conduct of the appellant in not producing the driving licence. However, what is significant here is not whether the driver had a valid licence or not, but how the accident had taken place. It is not his case that the accident had taken place at the time when he was driving the vehicle. On the other hand, he contends that he had only parked the vehicle to help himself with some refreshment and also for addressing nature's call. First, the activities in which the appellant was engaged in at that time when the accident took place cannot be stated to be something done not in the course of employment. What is required of the Insurance Company in this proceeding is to pay compensation for the injuries suffered by the claimant in the course of employment, and that need not necessarily be one suffered at the point when he was driving the vehicle. I therefore find the reason of the Commissioner not convincing and consequently hold that the Insurance Company liable to pay the compensation.

6. In the result, this appeal is allowed without costs. The learned counsel for the appellant was not able to inform the Court if the employer of the appellant

had satisfied the amount awarded by the Commissioner. In case the employer has not deposited any such amount, then the Insurance Company would also be liable to deposit and it is so directed to deposit the said amount within one month from the date of receipt of a copy of this order, on failure of which the Insurance Company would be liable to pay interest @ 12% per annum. The appellant is directed to forward a copy of this order to the Insurance Company since the company opted to remain exparte.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1.The Commissioner for Workmen's Compensation I
(The Deputy Commissioner of Labour - I)
Chennai.

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

+1 cc to M/s.N.S.Sivakumar, Advocate Sr.No. 5139

CMA.No.1656 of 2001

CNR (CO)

RRI 12/04/2017

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