



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.12.2017

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No.1051 of 2015

WEB COPY

Muthuvinayagam

... Appellant/Petitioner
Vs.

1.M.Nambirajan

2.The Oriental Insurance Company Ltd,
Tirunelveli. ... Respondents/Respondents
(R-1 Set exparte before the Lower Court)

Prayer: Civil Miscellaneous Appeal is filed under Section 30(1) of Workmen Compensation Act, 1923, to set aside the order in WC.No.49 of 2010 (Non-Fatal) on the file of the Deputy Commissioner of Labour, Tirunelveli dated 24.12.2012.

For Appellant

: Mr.R.Krishnan

For Respondents

: Mr.K.Bhaskaran for R2

R1-Exparte.

JUDGMENT

The appellant herein met with an accident on 06.03.2010 at about 06.30 A.M., near the Joes Engineering College, Moondradaippu, Tirunelveli District. The appellant was driving an Auto belonging to his father Nambirajan. He met with an accident involving another Auto. The appellant suffered injuries on the head as well as fracture in the left wrist. The disability suffered by the appellant was assessed at 30% by PW.2. Ex.P4 disability certificate was also marked.

2.The first respondent, who is the vehicle owner remained exparte.

3.The second respondent insurance company contended that the appellant is none other than the son of the first respondent. There is nothing to show that there was an employee - employer relationship between the appellant and the first respondent. The defence raised by the second respondent herein was accepted by the Deputy Commissioner of Labour, Tirunelveli. Petition filed under the Employee's Compensation Act, 1923 was dismissed by order dated 24.12.2012. This is under challenge in this appeal.

4.This appeal was admitted as the following substantial



question of law arose for consideration :

"Whether the finding of the Deputy Commissioner of Labour that there is no employer - employee relationship between the appellant and the first respondent is correct?

WEB COPY

5.It is not in dispute that the vehicle in question belonged to the first respondent and that it was insured with the second respondent. The specific case of the appellant is that he was working under his own father and was the driver of the Auto in question. According to the claimant, the accident occurred during the course of his employment. The appellant was cross examined by the counsel for the second respondent. What the second respondent elicited from the appellant was that the appellant had not filed any documentary evidence to show that he was getting a sum of Rs.150/- per day from his father. In such cases, documentary evidence would obviously not be forthcoming. Merely because the appellant could not adduce documentary evidence, the Commissioner for Workmen Compensation ought not to have non-suited him on that ground.

6.It is nor uncommon to find that the sons work under the fathers and get remuneration for the services rendered. The categorical testimony of the appellant is that he was working as a driver under his own father and that he was paid daily wages for the same. There is no justification in doubting the said testimony. The fact that he is the son of the vehicle owner cannot be put against him. I answer the substantial question of law raised in this appeal in favour of the appellant. The Deputy Commissioner of Labour ought to have held that the claim petition is very much maintainable.

7.Coming to the quantum of compensation to be awarded to the claimant, it is seen that the claimant suffered a non-schedule injury. Therefore, the formula set out in the Workmen Compensation Act cannot be applied. However, this Court can apply the provisions of the Motor Vehicles Act, 1988 for awarding compensation to the claimant. PW.2, who was examined the claimant was not the doctor who treated the claimant. It is admitted that the claimant suffered a fracture in the wrist. He was also an in-patient for a full five days. One can safely conclude that the claimant would have been out of employment for about a month on account of the injuries suffered by him.

6.Therefore, the compensation payable to the claimant can be worked out as under :

For loss of income	: Rs.5,000/-
For pain and sufferings	: Rs.10,000/-
For attendar charges	: Rs.5,000/-



3

For extra nourishment : Rs.5,000/-
For loss of amenities : Rs.25,000/-

Total : Rs.50,000/-

WEB COPY

8.The compensation payable to the claimant is quantified at Rs.50,000/- with interest at the rate of 7.5% per annum. Accordingly, the order in WC.No.49 of 2010 (Non-Fatal) on the file of the Deputy Commissioner of Labour, Tirunelveli dated 24.12.2012 is set aside.

9.Since the offending vehicle was insured with the second respondent insurance company, the second respondent is directed to deposit the said sum with interest at the rate of 7.5% per annum, from 30 days after the date of accident, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the said amount, by filing proper application before the Deputy Commissioner of Labour, Tirunelveli.

10.This Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

The Deputy Commissioner of Labour, Tirunelveli

Copy to:

The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.KRISHNAN,Advocate,SR. 90807

+1cc to Mr.K.BHASKARAN,Advocate,SR. 90678

C.M.A. (MD) No.1051 of 2015
04.12.2017

SKM

KK/JC/SAR 4/18.12.2017/ 3P- 5C/