

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2018

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.1338 of 2009

M/s.United India Insurance
Company Limited, Salem.

...Appellant

Vs

1.Manikandan
2.N.Punitha

...Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, against the award dated 30.09.2008 made in W.C.No.600 of 2004, on the file of the Commissioner for Workmen's Compensation (DCL), Salem.

For Appellant : Mr.R.Sreevidhya

For Respondents : Mr.V.R.AnnaGandhi [for R1]

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the Appellant/Insurance Company against the Award dated 30.09.2008 made in W.C.No.600 of 2004, on the file of the Commissioner for Workmen's Compensation (DCL), Salem.

2. At the time of admission, this court, by order dated 22.06.2009, admitted the CMA observing that the substantial question of law involved in this case is,

"Whether the learned Commissioner has erred in holding that the injured has sustained a loss of earning capacity to the tune of 45% without referring to Schedule I of the Workmen Compensation Act?"

3. It is the case of the injured claimant-Manikandan that while he was working as a cleaner in the bus bearing Registration No.KA-11-A-9199 owned by KPN travels which runs in the route Devakottai-Bangalore, on 21.09.2000, while he was cleaning the vehicle near Badhrakaliamman temple, by standing on the top of the bus to wash the same, high tension electrical wire going through the temple came in contact with the bucket and the claimant was thrown out. Due to the said accident, the petitioner sustained multiple bone injury all over the body. The claimant at the time of the accident was only 23 years old and

being the only breadwinner of the family, he suffered a lot. The claimant would contend that he was paid a sum of Rs.3,500/- as monthly salary and he was not in a position to attend to his work as earlier as he was taking treatment for the accidental injuries. The claimant would further contend that the said vehicle was insured with the United India Insurance by the KPN Travels and in connection with accident, no compensation was received by the claimant. According to the claimant, since the injury was caused to him during and in the course of and arising out of employment, he is entitled for compensation of a sum of Rs.2,00,000/- with interest from the date of petition.

4. The second respondent/Insurance company namely, the Appellant herein had filed a counter in the said Workmen's Compensation Petition before the Deputy Commissioner of Labour, stating that the employment with the first respondent/KPN Travels was denied and would also questioned the relationship between the claimant and the second respondent herein (KPN Travels). The alleged accident did not occur during the course of employment and the accident itself was denied since the said petitioner did not clean the bus. The appellant would also contend that on the fateful day, the claimant was not asked to clean the bus and it was also not parked as alleged by the claimant i.e, near the Badhrakaliamman temple for cleaning the same and there was no necessity for them to clean the bus and the manner of accident itself was denied. The Appellant contended that they are not liable to pay compensation for the inadvertent act or to indemnify the owner of the bus. The appellant would also contend that the said bus was not insured with the appellant at the time of the alleged incident as per the records available with them. The claimant has not furnished branch name or the policy number for the verification of the same. The bus owner had also not informed about the alleged incident to the appellant herein. Any act contravening the safety measure is violation of statutory provision and in cases of such violation of safety measure, the Appellant is not liable to pay any compensation. The Appellant further contends that the petitioner is not permanently disabled but he sustained injuries and took further treatment and the said injury might have been caused by some other accident. He also denied the age and income of the claimant as false and the claimant had to prove the same with proper documents. The claimant by making such false allegations has attempted to enrich himself by narrow means and has lodged this FIR. The Appellant sought for dismissal of the petition.

5. Before the Commissioner, on the side of the claimant, he has examined himself as P.W.1 and the doctor who treated the claimant has been examined as P.W.2 and documents in Ex.Nos.1 to 7 has been marked. On behalf of the second respondent/Insurance company, the Manager of KPN Travels, Salem was examined as R.W.1

and Ex.R.1 series document has been marked, but no oral evidence was let in.

6. It is seen from the records that the first respondent herein/claimant was working as a cleaner and he sustained bone injury while cleaning the said bus and claimed the amount of Rs.2,00,000/- as compensation for the same before the Commissioner of Workmen's Compensation, Salem. It would be seen that the said incident was informed to the Police and FIR has been lodged in FIR.No.591/2000 on 20.12.2000. The claimant while deposing evidence submitted that immediately after the accident, the father of the claimant has given a complaint on 20.12.2000 itself which was marked as Ex.P.4 and the Police has not registered the complaint on that day itself and only after three months, the same has been registered. Even though the Judgment rendered by the Judicial Magistrate, Devakottai, in C.C.No.725 of 2002 dated 28.05.2003 was filed on the side of the appellant/insurance company, stating the said order acquitted the driver of the bus from criminal charges, it was only based on benefit of doubt.

7. The Commissioner for WC Act, on a perusal of the above said judgment rendered in C.C.No.725 of 2002 dated 28.05.2003 pointed out that the claimant was working in the second respondent bus company as a cleaner and on 21.09.2000 while cleaning the bus, he sustained injury and these facts have been elaborately given in the said order of Judicial Magistrate and the evidence given by the Manager, KPN Travels on behalf of the Insurance company/R2 before the Tribunal, was not accepted by the Commissioner, stating that it is only an afterthought and the said piece of evidence against the claimant was not accepted.

8. On the other hand, the second respondent/Insurance company has not filed any independent document and also has not examined any independent witness in support of its contention regarding the denial of occurrence. But on the other hand, the appellant/2nd respondent had denied the employer and employee relationship of the claimant and the 1st respondent before the Commissioner and would also submit that the said accident did not occur during the course of employment. They would submit that the treatment and the expenditures alleged as incurred are all false. He is hale and healthy and the petitioner is not permanently disabled.

9. Heard the learned counsel appearing on both sides and perused the materials available on record.

10. As per the evidence of the father of the claimant who deposed as P.W.1, the claimant sustained several bone injury and entire teeth has been burnt fully and the management did not even bothered to take him to hospital, but only the public took

him and admitted in hospital and only because of the General Public, his son/claimant is alive today. Only on 22.09.2000, the claimant/appellant got consciousness and he sustained multiple burnt areas all over the body due to high tension electrical shock accident. From the Wound certificate, it is clearly seen that the injured suffered burn injuries on the right side and left side of back, right upper arm and both soles of foot (front side) and to toes (II, III & IV). Hence, it is evident that the claimant sustained injury only when he was electrocuted. That apart, the petitioner sustained bone injury and he was taken treatment at Devakottai hospital.

11. It could be seen from the evidence of P.W.1/father of the claimant that he had given complaint immediately to Police, but the same was not immediately acted upon by the Police officials and only at the later point of time, C.C.No.725/2002 was filed by the learned Judicial Magistrate Court, Devakottai, and only on the ground of benefit of doubt, the accused/driver in the said case has been acquitted. Further, no contra evidence is produced by the owner of the vehicle or the Insurance Company to deny their liability or the occurrence. In such circumstances, the Commissioner for WC Act has come to the correct conclusion that the injury was caused to the claimant due to electrocution while cleaning the bus. Further, the Commissioner, taking note of the evidence placed before it and medical certificates, fixed the age of the petitioner at 23 years and the monthly income at Rs.2,534/-, and as per the Workmen's Compensation Act, factor has been taken as 219.95 and for the 45% permanent disability suffered by the Petitioner, arrived at Rs.1,50,483/- as compensation.

12. The Doctor in his evidence stated that he examined the claimant and given the disability certificate. He further stated that the injury sustained on 21.09.2000 caused disability. As regards the lifting of the hands, it was only from zero degree to hundred degree; left hand has been disfigured and he is not able to fold his legs properly and as such, he assessed 45% disability.

13. From the above discussion, the contentions raised on the side of the appellant denying the relationship between the owner and the vehicle is negatived and further the claimant has clearly proved that he sustained injuries during the course of his employment as cleaner. In view of the fact that the second respondent vehicle has been insured with the appellant herein, as per the policy conditions, the appellant is liable to pay the amount of compensation. Hence, the appellant is liable to pay the amount of compensation as awarded by the Commissioner. In view of the above findings, the claimant is entitled to the entire amount deposited by the appellant/Insurance company.

14. In view of the foregoing reasonings, the substantial question of law involved in this CMA is answered in favour of the claimant and against the appellant. Accordingly, the Civil Miscellaneous Appeal is dismissed. The award passed by the Commissioner, WC Act, is confirmed. No costs.

-s/d-

Assistant Registrar(CCC)

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Sub-Assistant Registrar

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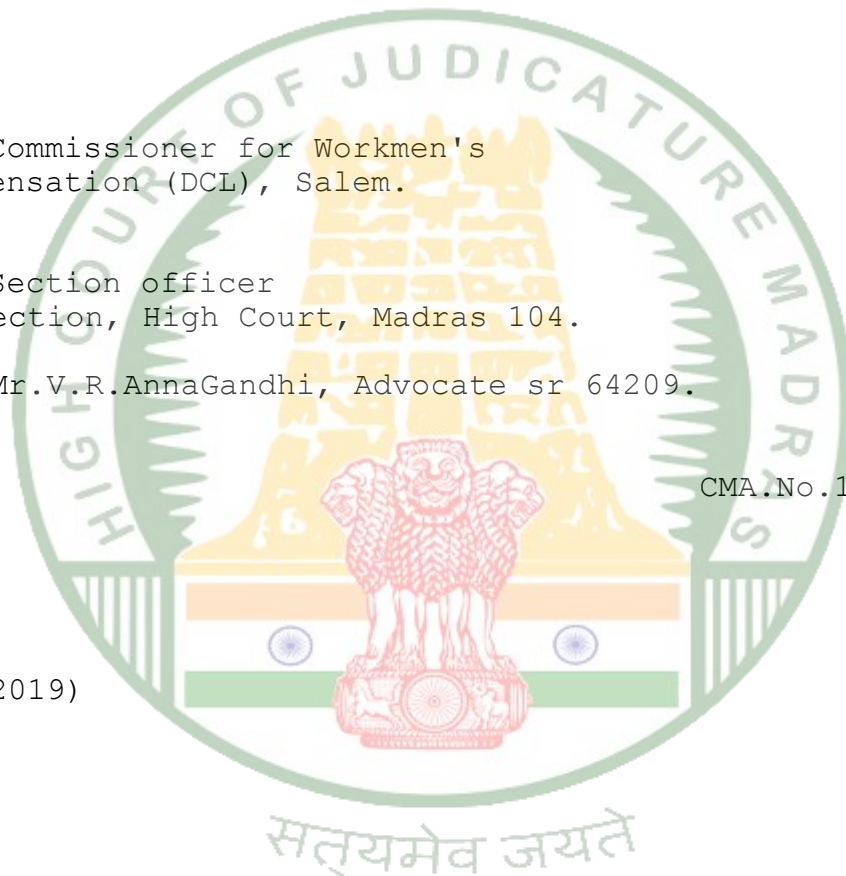
The Commissioner for Workmen's
Compensation (DCL), Salem.

copy to
The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.V.R.AnnaGandhi, Advocate sr 64209.

CMA.No.1338 of 2009

GJ(CO)
SP(29/03/2019)



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