

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.04.2018	Delivered on: 25.08.2018
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THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.472 of 2013

P.Antharavelu

.. Appellant / Appellant

Versus

1. A.Singaravelu

2. M/s.New India Assurance Co.Ltd.,
Casino Division,
P Wing, Macmillan House,
2nd Floor, Chennai - 600 002.

.. Respondents/ Respondents

(R1 exparte in lower Court)

Appeal filed under Section 30 of Workmens Compensation Act, 1923, against the Order passed by the Deputy Commissioner for Workmens Compensation-I, Chennai - 600 006 in W.C.No.277 of 2008 dated 03.02.2011

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.S.Manohar for R2
R1 exparte in lower Court

JUDGMENT

The appellant is the applicant who preferred the Civil Miscellaneous Appeal against the Order passed by the Deputy Commissioner for Workmen Compensation I in W.C.No.277 of 2008 dated 03.02.2011. W.C.No.277 of 2008 was preferred by the applicant claiming a compensation for the accident that occurred while he was in employment under first respondent. The second respondent herein is the Insurance Company.

2. The brief facts of the applicant is that the applicant P.Antharavelu was working as a driver under the first respondent. He was a driver of the Goods auto bearing Regn.No.TN-07-AA-5810 which is owned by first respondent. The

claimant has filed this application by stating that on 08.10.2007 while he was in employment and while he was engaged in his work, he met with an accident and for which he is claiming a compensation for loss of earning, under Section 10(1) of Workmen Compensation Act 1923.

3. It is stated by the claimant that while he was in employment under first respondent as driver. On 08.10.2007 at about 9.30 p.m after unloading the goods and proceeding at Adyar Sastri Nagar from 1st Cross Street to 3rd Cross Street, the vehicle got capsized and due to the said accident, he had sustained injuries in his right hand. After the accident, immediately he was taken to Swaram Nursing Home at Thiruvannamiyur, Chennai and taken treatment from 08.10.2007 to 10.10.2007 as inpatient for the fracture injuries sustained in his forearm. The applicant also taken treatment as outpatient for some time. Subsequently, the applicant issued a legal notice to the respondents claiming compensation, but there was no reply from the respondents. Hence the applicant preferred the proceedings before the Workmen Compensation.

4. The said workmen Compensation, based on the evidence and documents, considered the facts as discussed in the said claim of the applicant and dismissed the claim of the applicant by observing that the applicant was working for more than five years under the first respondent namely Mr.Singara Velu, who is none other than the son of the applicant. The first respondent/Singara Velu was living separately. Based on the evidence, the Workmen Compensation Authorities observed the fact that the applicant sustained injury and also the disability sustained by him was at 35% but coming to the aspect whether the applicant can claim a compensation under the Workmen Compensation Act, based upon the evidence, the Workmen Compensation authority has given a finding that the applicant is the father and the first respondent herein, who is the owner of the vehicle. Hence, there is no employer and employee relationship and therefore there is 'no owner - driver relationship', since, the relationship is mentioned as father. Hence the learned commissioner concluded that the applicant is not entitled for any compensation.

5. Against the above order, the applicant preferred this appeal. The appellant herein has stated that the appellant and the first respondent are residing separately and on that day of accident, the applicant was in course of employment and that he was returning along with the line man one Mr.Muthu Kumar, after unloading the goods. Even though, the appellant and the first respondent are the father and son and they are residing separately and doing separate jobs and there is mainly relationship of driver and owner was subsisting between the

applicant and the first respondent.

6. It is also the grievance of the appellant that the workmen Compensation ought to have a liberal view, by appreciating the evidence of appellant with regard to his employment under the first respondent. Since it is a beneficial legislation, the Tribunal ought not to have construe the same stringently.

7. A perusal of application filed by the applicant, claiming a compensation under Section 22 of the Workmen Compensation Act reveals that the applicant while he was driving the goods auto at Sastri Nagar from 1st Cross Street to 3rd Cross Street, the auto was unexpectedly capsized resulting the fracture in his right hand. Further, the applicant stated that regarding the treatment he had taken, because of the fracture injuries sustained by him, he is unable to drive the auto anymore. He further stated that he was aged about 48 and he was drawing a salary of Rs.200/- per day from the first opposite party on an average of Rs.5,000/- per month. It is also stated by the applicant that the goods auto involved in the accident is owned by the first opposite party and he has insured with the second opposite party and having a valid insurance. Hence, the applicant sought for compensation of Rs.2,00,000/- by the opposite party jointly and severally at 12% per annum.

8. On a perusal of the counter objections filed by the second opposite party it reveals the fact that it denied that allegations relating to employment raised by the first respondent as paid driver and also the nature of injuries and the accident arising in the course of and out of employment with the first opposite party. It is also observed from the objections that the applicant had not offered all the documents which he relies with the applicant. Further there is no proof filed along with the application with regard to the employment with the first opposite party as a driver and for his earning at Rs.200/- per day as wages. The objections made with regard to the nature of injuries sustained by the applicant, the treatment and also the disability sustained by the applicant were all denied. It is the submission by the first opposite party that the applicant is the father of Singara velu who is the first opposite party. They purchased the goods auto bearing Regn.No. TN-07-AA-5810 in the name of Singaravelu and also obtained the permit. The insurance policy is in the name of Singaravelu but the applicant is only looking after the vehicle. He had obtained the driving licence and he is driving the vehicle. Hence, there is no contract of employment between the applicant and his son, the first opposite party. The owner of the vehicle did not indemnify that his family members were not covered in the contract of Insurance Policy. It is also stated that the applicant Mr.Anthra Velu was driving the

vehicle only in the capacity as father and as head of the family of the first opposite party.

9. On a perusal of records made by both the applicant and the respondents that the goods auto bearing Regn.No.TN-07-AA-5810 was purchased in the name of Singaravelu and the claimant Anthra velu being the father was driving the vehicle only in the capacity as the father. It is also observed that in proof of the same, no document was produced before the Workmen Compensation. Regarding the contract between the first respondent as workman and employer, there is also no document filed before the Workmen Compensation that the father was paid a definite sum of rupees for his employment. However, the ration card Ex.P.9 cannot prove that the applicant and the first respondent i.e., son and father are living separately. Since nowadays there is no joint family system being followed by the todays society. Hence, the first aspect whether the applicant is the workman under the first respondent who is the son has not to be proved. Regarding the injuries sustained by the injured, while he was returning from unloading the goods', the fallen down was not proved before the Tribunal.

10. From the evidence of R.W.1, it is observed that the applicant is the father and the son is the owner of the vehicle and apart from that, there is no other document to prove that the applicant/father was working under his son for wages who is the first opposite party and he was earning a sum of Rs.200/- per day were not clearly proved. The learned counsel for the applicant argued, by quoting the case laws in 2006 ACJ 850 in the Judgment of the High Court of Karnataka at Bangalore made in M.F.A.No.1541 of of 2001, dated 28.03.2005 in the case of Manohar Bhimappa More /Vs/ Mahadev Bhimappa More and another, in support of his contention and the relevant observations read thus:

" Workmen's Compensation Act, 1923, Section 2 (1)(n)-Workman - Person employed as coolie on tractor-trailer was injured and claimed compensation- Injured is brother of owner of vehicle and he stood as guarantor for repayment of load for purchasing tractor-trailer-Commissioner denied compensation on the ground that injured cannot be considered as a workman-Whether the fact that injured is brother and guarantor of owner of vehicle is a valid reason to hold that he was not a workman -Held: no: there is no inhibition in law for employment of member of family in connection with tractor-trailer; member of family so employed cannot be considered as a workman in law only when he is the

registered owner of the vehicle" .

In the said case, " the respondent No.1 is the owner of the tractor - trailer, the injured is the brother of the respondent No.1 and he contends that he was employed as a coolie in the tractor - trailer at the time of accident the injured brother stood as guarantor for repayment of loan borrowed by the respondent No.1 for purchase of tractor-trailer in question. The insurer, respondent No.2 took up the plea that the injured is the brother of the respondent No.1 and cannot be considered as a workman and sought exoneration of liability . It is decided by the Workmen's Compensation Commissioner is bad in law. After all the tractor-trailer is meant to be used for agricultural purpose and it requires employment of people. In the rural lifestyle, it is not uncommon to find the practice of oral appointment for specific purpose and time and many a time, the persons in the family would be employed for doing the work instead of employing strangers" .

Based on the above said facts, the said appeal was taken up and was allowed by stating that there is no inhibition in law for employment of the member of family in connection with the tractor-trailer.

11. On the other hand, the learned counsel for the respondents argued that by quoting case laws in 2007 ACJ 1025 in the Judgment of the SUPREME COURT OF INDIA AT NEW DELHI made in C.A.No.856 of 2007 arising out of S.L.P © No.9771 of 2004, dated 20.02.2007 in the case of Gottumukkala Appala Narasimha Raju and others /Vs/ National Insurance Co.Ltd. and another, in support of his contention and the relevant observations read thus:

" Workmen's Compensation Act, 1923, Sections 2 (1) (n) and 3(1) workman -Claim application - Malafide claim- Death of driver of tractor in accident and claimants claimed compensation from owner and insurance company of the tractor - Owner of tractor who is widow of the deceased stated that she was living separately from her husband before his death, deceased was employed as driver and was a workman - Neither any documentary proof to establish contract of employment was produced nor any independent witness was

examined - If they were living separately in view of certain disputes, the question of husband being a workman under wife appears to be far -fetched-Story has been concocted for purpose of claim-Whether deceased was a workman and the claim was bonafide- Held: no; owner of tractor joined hands with claimants for laying a claim against insurance company; claim dismissed".

In this case, the owner of the tractor is the wife and the deceased is her husband. The applicant raised a contention that she and her husband had been living separately prior to the date of accident and the tractor in question being insured with the respondent No.1 and she was not liable to pay any amount to claimant by way of compensation. The contention raised by the respondent No.1 before the commissioner under the 1923 Act was that as the deceased and the owner of the tractor were husband and wife, the question of there being a relationship between them did not arise and in that view of the matter, the deceased was not a 'workman' within the meaning of the provisions of section 2(1)(n) of the 1923 Act.

In the said order, It is observed by the Court that if the vehicles are covered by the Insurance policy, the insurer may be made as a party and it may be liable to indemnify the owner, but situation is entirely different and after observing so, the Apex Court held as follows:

" It is wholly absurd to suggest that the husband would be a "workman" of his wife, in absence of any subsequent contract. and it is also observed that we have no doubt in our mind that only for the purpose of proceeding 1923 Act, the applicant have concocted the story of husband and wife living separately. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bonafide".

If the said decision, viz., Gottumukkala Appala Narasimha Raju's case is applied to the facts of this case, then appeal was dismissed as devoid on merits. In the present case, the son has to be owner and the father is the driver of the vehicle is not an acceptable fact. Apart, from the Ration card, there is no

other document produced to prove that there exists a relationship between the applicant and the first respondent as one of the workmen and employer.

12. In view of the arguments made by both sides and also the careful perusal of evidence and records, this Court is of the view that this Appeal has no merits and the order of Commissioner of Workmens Compensation does not require any interference by this court. Hence, I am not inclined to interfere with the order passed by the authority.

13. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vv

To

- 1.. The Deputy Commissioner for Workmens Compensation-I,
Chennai - 600 006
2. The Section Officer, VR Section,
High Court, Madras.

+lcc to Mr.S.Manohar, Advocate, S.R.No.50062

C.M.A.No.472 of 2013

VGII(CO)
GSP(29/08/2018)

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