

IN THE HIGH COURT OF JUDICATURE AT MADRAS

12.09.2018

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A. 3571 of 2004
and C.M.P.No.19312 of 2004

M/s United India Insurance II Opposite party
Branch Office,
New Edapadi Road,
Sankari.

.... Appellant

Vs

1.P.Manickam

2.P.Palaniappan

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923, against the award dated 12.4.2004 made in WC No.85/2002 on the file of the Commissioner for Workman Compensation (Deputy Commissioner for Labour) at Salem.

For Appellant : Mr.T.Ravi Chandran

Mr.Haribabu for
For Respondents : Mr.S.Kalyanaraman for R1
R2 - Exparte

JUDGMENT

The Civil Miscellaneous Appeal has been filed, against the award dated 12.4.2004 made in WC No.85/2002 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner for Labour) at Salem raising various grounds.

2. The following question of law have been raised to the Appellant herein.

i. Whether the learned Commissioner has failed to note

the claimant and the 1st opposite party were owning the lorry jointly as partners

ii. Whether the learned Commissioner has failed to note that there was no Employer-Employee relationship between the Claimant and the 1st Opposite Party and the Claimant was not a workman as defined under the WC Act

iii. Whether the learned Commissioner has failed to appreciate the statement given by the driver of the vehicle and the Claimant to the Police authorities immediately after the accident to arrive at a conclusion on the question of liability

iv. Whether the learned Commissioner has erred in not noticing that the disability was not assessed in accordance with the Schedule I of the WC Act

v. Whether the award of the Commissioner is liable to be set aside

3. The case of the appellant is that the first respondent had filed a claim petition before the Deputy Commissioner of Labour, Salem for the injuries sustained by him in an accident, that occurred on 17.01.2002.

4. While, the first respondent was carrying the load of cotton in a lorry bearing Registration No.KA.01.B.9588 which was proceeding from Rajkot to Coimbatore. The first respondent had submitted which he was travelling in NH.13 in 336 mile stone within the limit of Jagalpur Police Station in Karnataka State, the lorry tyre got punctured and hence the first respondent and the second driver stopped the lorry and parked it on the left side of the road, then the cleaner and the second driver Murali and the first respondent were making arrangements to rectify the puncture.

5. At that time at about 2 AM, a rowdy gang numbering more than 20 persons came with weapons and assaulted the applicant by the blunt weapon over the head of the first respondent. They also assaulted the cleaner Sakthi and taken away the cash of Rs.9,000/- and the other articles viz watch, ring etc. The first respondent sustained a major fracture on the skull and he was admitted to Chithradurga Hospital, Karnataka and later shifted to Bangalore Hospital. After that the first respondent took treatment in Lotus Apollo Hospital, Erode as an inpatient for his head injury. The first respondent was not able to move anywhere without the help of others and not able to speak properly and the memory power of the first respondent was also completely reduced. Since the injury sustained by the first respondent is a permanent injury he could not continue his profession as earlier and he spent Rs.70,000 towards his medical expenses, though, he was earning only Rs.4,000 as monthly salary.

6. The said lorry was covered by the policy with the appellant herein and a complaint was also lodged before police officials of Jagalur Police Station with regard to the said incident and the same was registered in Cr.No.14/2002 against the said unknown persons under sections 396,397 IPC, which was pending.

7. The learned counsel for the appellant would further submit that when the first respondent filed a claim petition before the Labour Commissioner, the appellant herein had filed a counter denying the averments made in the petition as they were made without any basis. The accident notice was also that served on the appellant herein and therefore the said claim was not maintainable.

8. The alleged employment, a driver under the second respondent was also questioned and would submit that the alleged incident was not due to the employment and in the course of the employment and the name of the injured person was not one in the same as mentioned in the FIR. The said incident was also not informed to the appellant immediately.

9. The validity of the insurance policy was also denied and the driver also had no valid license on the date of the incident and the accident was not due to any road accident, but it is only with regard to the theft by rowdy elements and hence the appellant are not liable to pay any compensation since there is no coverage for theft under the said insurance policy. Further submitted that the first respondent and the second respondent are the partners in the said business, therefore, he cannot be termed as a employee under the second respondent and the owner cannot be benefited by the policy. Since the second respondent not appear before the trial Court inspite of receiving summons, he was set ex-parte. Here also no representation for the second respondent.

10. It is seen from the records that the first respondent herein/Petitioner had filed 9 documents supporting to the case and the same were marked as Exhibits P1 to P9 and the appellant herein/second respondent had filed only one document, which is the insurance policy copy. The first respondent had let in evidence and examine two witnesses. The appellant herein had examined one Venkatesan as witness. From the award, it could be found that the first respondent sustained injury when he was travelling from Rajkot to Coimbatore. When the vehicle was travelling in Karnataka State in Jagalur Police Station limit, the said vehicle was got punctured, which necessitated the driver to stop the vehicle and while doing repair works in the said vehicle, some rowdy elements had beaten the first

respondent and the cleaner and grabbed money and the other valuable articles from the first respondent and the cleaner.

11. It is also seen that the second respondent whom the appellant herein has mentioned as the owner of the vehicle has not appeared before the commissioner for enquiry and he has also not filed any statement with regard to this issue. Hence the lower Court has come to the conclusion that there was no contra evidence produced by the appellant to prove that the first respondent was not working under the second respondent as a lorry driver and also there was no denial from the second respondent and that the first respondent was not working under him. The labour Court has rightly come to an conclusion that the first respondent working under the second respondent as a driver and while carrying the load from Rajkot to Coimbatore, the said incident was happened, due to which the first respondent sustained injuries and hence it could be found that the first respondent was working under the second respondent and the Employer and Employee relationship has been rightly established.

12. Dr.Natarajan who was examined as second witness gave disability certificate that the first respondent affected with 63% disability due to the said injury and further state that the first respondent he cannot drive the vehicle any more. Since no cross-examination was done by the appellants herein and no evidence was let in by the appellants to prove the disability sustained by the first respondent and the doctor's statement, the labour Court has rightly come to the conclusion that the first respondent had sustained 63% disability. This Court also accept the same.

13. With regard to the insurance policy produced by the appellant herein, it is seen that said lorry bearing Registration No.KA-01/B 9588 has been duly insured with the appellant and as per the said policy, it corroborates with driver, one cleaner and six labourers. So, as per the said policy, the driver namely the first respondent is entitled he is covered under the said policy.

14. The contention of the learned counsel for the appellant states that the first respondent is not covered under the policy, since the policy covers for two drivers and this case, insurance is claimed by the driver and the cleaner, the same cannot be accepted under the policy. In view of the fact that there is no contra evidence produced by the appellant to prove that the first respondent is not a driver under the second respondent, first respondent and the second respondent are the partners for the said business was also not established, this Court accepts the contention of the labour commissioner and the same is being upheld.

15. Regarding the driving license, the said license was also produced at the time of enquiry. Since there was no document produced to prove the age of the first respondent, the driving license has been taken to fix the age of the first respondent and accordingly fixed 35 years, the same was also produced. As per the Tamil Nadu G.O.No (2D) 102, labour and employment dated 22.09.1999, the salary fixed for lorry drivers are Rs.2993.56 and the same has been taken for fixing the salary and accordingly, disability was fixed as 63% and calculated of Rs.2,22,986 is the amount to be paid as compensation by the appellant herein to the first respondent. The appellant is liable to pay the compensation within 30 days, failing which, 12% simple interest has to be paid from the date of award of compensation till the date of deposit.

16. On perusal of the records, it is seen that the appellant has failed to prove that the first respondent and the second respondent are partners in the said lorry business and hence the first question of law is also against the appellant herein.

16.1. The second question of law that there was no employer and employee relationship. With regard to this there was no evidence produced by the appellant that the first respondent was not an employee under the second respondent and therefore, the denial of employer and employee relationship was not proved by the appellant herein and the second respondent also did not appear before the Court to give any contra evidence. Therefore, the second question of law was also against the appellant.

16.2. With regard to the third question of law, the learned commissioner has failed to appreciate the statement given by the driver of the vehicle and the Claimant and also the Police authorities immediately after the accident to arrive at a conclusion as liability. The said accident was registered by the Jagalur Police Station official and the Cr.No.14/2002 has been registered and was under investigation till the claim petition is filed.

16.3. The liability regarding the appellant has been established very clearly by the first respondent and there was no contra evidence produced by the police officials that they have deposed before the labour Court that they conducted the enquiry and the investigation regarding the said accident. Otherwise no particulars before the authorities to prove that the claim of the first respondent is correct and which proves that the appellant is liable to pay the compensation amount to the first respondent. The third question of law is in favour of

the first appellant.

16.4. With regard to fourth question of law, this is also held against the appellant. The said amount of compensation was awarded only as per the schedule I of the Workmen's Compensation Act and therefore, this Court finds no wrong in the order wherein compensation was awarded by the Deputy Commissioner for Labour.

17. In view of the above findings that the fifth question of law is answered against the appellant herein and the award passed by the Commissioner for Workmen Compensation, Salem is confirmed. Accordingly, the present Civil Miscellaneous Appeal filed by the appellant is dismissed. The first respondent is eligible to withdraw the entire amount of compensation along with interest as ordered by the Commissioner of Labour lying in the deposit of W.C.No.85 of 2002.

Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

ak/ssb

To

The Deputy Commissioner for Labour,
(Commissioner for Workman Compensation), Salem.

+1cc to Mr.S.Kalyanaraman, Advocate SR.No.63344

+1cc to Mr.T.Ravichandran, Advocate SR.No.64228

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and CMP.No.19312 of 2004

RK(CO)
GMY(01/04/2019)