

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	31.10.2019
Pronounced On	06.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2389 of 2005

and

C.M.P.No.12754 of 2005

and

C.M.P.No.15 of 2011

M/s.National Insurance Company Limited,
No.74A, Paramathi Road,
Namakkal

... appellant/2nd Respondent

vs

1.R.Thangavel ... 1st Respondent/Petitioner

2.M.Subramanian ... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the award passed in W.C.No.418 of 2003 dated 02.05.2005 on the file of the Commissioner for Workmen Compensation, Salem.

For Appellant : M/s.N.B.Surekha

For R1 : No appearance

For R2 : Dismissed vide order dt.14.07.2010.

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned order dated 02.05.2005 passed by the Commissioner of Workmen's Compensation, Salem in W.C.No.418 of 2003.

2.By the impugned order, the Commissioner of Workmen's Compensation, Salem has awarded a sum of Rs.1,57,064 (Rupees one lakh fifty seven thousand and sixty four only) to the 1st respondent/claimant. The 1st respondent/claimant had filed the above claim petition under Section 10 of the Workmen's Compensation Act, 1923 wherein it was stated that he met with

an accident while working in the Rig Lorry for the 2nd respondent on 17.06.2003 and he got grievous injury on his hip and neck and spinal.

3.It was stated that at the time of accident that the 1st respondent was engaged as a workmen in the above Rig Lorry and the Rig Lorry was used for digging borewell of Thangavel son of Veerappagounder Thottam - Mettukattusalai, Moongilapatty (P.O). The said Rig Lorry was insured with the appellant when the alleged accident occurred.

4.The appellant and the 2nd respondent had filed the respective counters before the Commissioner of Workmen's Compensation. The 2nd respondent owner of the lorry has denied the liability stating that the 1st respondent was not engaged by him in the Rig Lorry operation and therefore no liability can be fastened. The 2nd respondent further stated that the 1st respondent was employed by him as a garden worker six months back and on the date of the alleged accident he was not working.

5.The learned counsel for the appellant has relied the counter filed by the 2nd respondent and had stated that there was no employer employee relationship between the respondents and therefore, the Commissioner of Workmen's Compensation erred in awarding the compensation to the 1st respondent.

6.The learned counsel for the appellant further drew my attention to the cross examination of doctor who has given disability certificate to the 1st respondent wherein he has stated that there is no external injury to him and that the stroke suffered by the 1st respondent was on account of prior health condition and he frequently suffered from epileptic attack.

7.The Commissioner of Workmen's Compensation has allowed claim petition based on the FIR filed as Exhibit P 1 stating that there was causal connection and therefore, the 1st respondent was entitled to the compensation. Since the Rig Lorry was insured with the appellant, the appellant Insurance Company was liable to pay the compensation to the 1st respondent.

8.At the time of admission on 04.08.2005, this Court has framed the following substantial questions of law to be answered:-

"(i) Whether the learned Workmen Commissioner is right in relying upon the certificate issued by the Sub Inspector of Police to hold that there exist a relationship of the employer and employee between the petitioner and the first respondent?

(ii) Assuming that the accident had taken place, in which the claimant has suffered an injury, yet, having regard to the place where the accident is shown to have taken place, has not the Workmen's Compensation Commissioner committed an error of law in holding that the policy of insurance covers that risk?"

9. I have perused the order and the records and considered the arguments advanced by the appellant. Though the name of the counsel for the 1st respondent is printed in the cause list, there is no representation for the said respondent. This appeal against the 2nd respondent was dismissed on 14.07.2010.

10. The authorities acting under the provisions of the Workmen's Compensation Act, 1923 are the ultimate fact-finding authority and therefore the finding of facts arrived by the Deputy Commissioner of Labour in the impugned order cannot be disturbed.

11. Further, the authorities acting under the said Act are entitled to base their findings on the preponderance of probabilities and are not governed by strict rules of evidence. The Deputy Commissioner of Labour has concluded that the 1st respondent was employed by the 2nd respondent notwithstanding the fact that 2nd respondent had specifically and categorically taken a stand that the 1st respondent was not employed by him. As the finding of fact arrived by the Deputy Commissioner of Labour's final it cannot be disturbed.

12. Consequently, the finding of fact arrived based on the FIR registered at the police station regarding the accident and regarding the existence of an employer-employee relationship between the respondents cannot be disturbed. Accordingly, the 1st question of law is answered against the appellant.

13. As far as the 2nd question of law raised by the appellant, it is evident that it does not involve any question of law based on the facts arrived by the Deputy Commissioner of Labour. Therefore, the 2nd question of law is also answered

against the appellant.

14.Further, the accident took place on 17.06.2003 and therefore it would be unfair to now relegate the 1st respondent workmen to work out his remedy afresh at this point of time. Therefore, the 2nd question of law is also answered against the appellant. At the same time, the appellant is given liberty to recover the amount from the 2nd respondent owner of the vehicle in accordance with law. It is made clear that the conclusions arrived based on the finding of facts of the Deputy Commissioner of Labour will not be binding on the appellant or the 2nd respondent in separate civil proceedings if any, appellant may choose to initiate to recover the amount from the 2nd respondent owner of the vehicle.

15.In the light of the above discussion, the present Civil Miscellaneous Appeal is dismissed with the above liberty to the appellant to recover the amount from the 2nd respondent in accordance with law. No cost. Consequently, Miscellaneous Petition are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To

1.The Commissioner for Workmen Compensation,
Salem.

Copy to:

The Section Officer,
V.R.Section. High Court,
Madras.

+1cc to M/s.N.B.Surekka, Advocate SR.91909

C.M.A.No.2389 of 2005
and
C.M.P.No.12754 of 2005
and
C.M.P.No.15 of 2011

GP (CO)
CB(19/02/2020)