

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	04.10.2019
Pronounced On	16.10.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.305 of 2006

and

C.M.P.No.977 of 2006

National Insurance Company Ltd.,
No.1, LRN Complex,
Sarada College Road, Salem -7. ...appellant/2nd Respondent

vs

1.R.Govindan1st Respondent/petitioner

2.M.Boopathy2ndRespondent/Ist respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order of the Learned Commissioner for Workmen's Compensation, before the Deputy Commissioner of Labour, Salem made in W.C.No.271 of 2002 dated 07.06.2004.

For appellant : M/s.R.Sreevidhya
For R1 & R2 : Not ready in notice

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned order dated 07.06.2004, passed by the Commissioner for Workmen's Compensation (before the Deputy Commissioner of Labour) Salem in W.C.No.271 of 2002.

2.By the impugned order, the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Salem has awarded a sum of Rs.2,56,765/- to the 1st respondent/claimant under the provisions of the Workmen's Compensation Act, 1923.

3.The case of the 1st respondent before the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Salem was

that on 15.11.2001 while crossing Udayapatty By-Pass around 10.30 a lorry bearing registration No. TN 23 D 7222 moving in front suddenly stopped without giving any signal. The 1st respondent who was driving lorry of the 2nd respondent bearing registration No. TN 27 B 7808 from Chennai to Salem, collided with the aforesaid lorry and sustained grievous injury in the accident and was rushed to the salem Govt. M.K.M. Hospital.

4.Subsequent to the accident, the Criminal Case was registered vide Criminal Case No.637 of 2001. Thereafter, the appellant filed a claim petition to the compensation.

5.The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Salem has allowed the same and has awarded a sum of Rs.2,56,765/- as compensation to the 1st respondent.

6.Aggrieved by the same, the appellant has filed the present Civil Miscellaneous Appeal on the ground that at the time of accident the 1st respondent was under the alcohol as is evident from Ex.R4 where it has been stated that the "breath smells alcohol".

7.Under these circumstances, the present Civil Miscellaneous Appeal has filed. On 27.01.2006. while admitting the appeal, this Court has framed the following substantial questions of law for consideration:-

1. Whether the Learned Commissioner is correct in awarding compensation to the applicant when admittedly the applicant had violated the law in driving the lorry after consuming alcohol as seen from the Accident Register and the Wound Certificate.
2. Whether Learned Commissioner is correct in his finding when Proviso (b) (i) to Sec.3 of the Workmen's Compensation Act, 1923 contemplates that the employer and consequently, the insurer is not liable to pay compensation "if the workman having been at the time thereof under the influence of drink or drugs"
3. Whether the Learned Commissioner is correct in awarding compensation when the Learned Commissioner had not followed the provisions Sec.4

(1)(c)(ii) of the Workmen's Compensation Act, 1923.

8.I have perused the impugned order and the evidences filed by appellant and the 1st respondent before the Commissioner for Workmen's Compensation (before the Deputy Commissioner of Labour), Salem.

9.Before the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem, the 1st respondent had filed six exhibits vide Exhibits No. A1 to A6 while the appellant filed six exhibits vide Exhibits No.R1 to R6.

10.The 1st respondent had examined as PW.1 along with PW.2 Doctor P.Sridhar while examined the appellant's witness one Mr.Ramalingam as RW1.

11.In the proceeding, both the appellant and the 1st respondent have filed respective wound certificates. The wound certificate filed by the 1st respondent is dated 14.02.2002 and was marked as Ex.A3. There was no reference to any influence of alcohol by the 1st respondent in the said certificate. There is yet another wound certificate filed by the appellant vide Ex.R4 which is dated 18.08.2003 signed by one Dr.P.Rasampal, Assistant Professor/Tutor, Govt. Mohan Kumaramangalam, Medical College Hospital, Salem.

12.In the said wound certificate alone it is mentioned that the 1st respondent was under the influence of alcohol (Breath Smells Alcohol). Thus, there is dispute on this aspect as to whether the information contained in the wound certificate dated 18.08.2003 is correct or not.

13.As per the Ex.R4, the 1st respondent was discharged on 24.09.2002 at 7.00 pm. Therefore, the Exhibit R4 cannot be relied upon to come a conclusion that the 1st respondent was under the influence of alcohol at the time of accident.

14.The extract from the accident vide Ex.R3 seems to indicate that the 1st respondent was under the influence of alcohol as it notes (Breath Smells Alcohol). The appellant has

also not produced any oral evidences to support that at the time of accident of admission in the hospital, the 1st respondent was under the influence of alcohol.

15. There is no corroboration of evidence. Thus, the defence of the appellant that the 1st respondent was under the influence of alcohol has not been established.

16. Therefore, the above substantial questions of law framed by this Court at the time of admission of the present Civil Miscellaneous Appeal has to be necessarily answered against the appellant.

17. Accordingly, the present Civil Miscellaneous Appeal is dismissed with consequential relief to the 1st respondent. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar (CS VI)

/true copy/
Sub Asst. Registrar

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To

1. The Commissioner of Workmen's Compensation,
The Deputy Commissioner of Labour
Salem.

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

+1 cc to Ms. R. Sreevidhya Advocate sr86997

pvs (co)
aa05/03/2020

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