

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 26.08.2019
CORAM:
THE HONOURABLE MR. JUSTICE T.RAJA
C.M.A. No.3531 of 2008

M/s.The New India Assurance Company
Ltd., Rep. by Divisional Manager,
No.69/70, S...pet Naidu Street,
Kanchipuram.

...Appellant

vs

1.Mrs.Sundari
2.Kousalya (Minor)
3.Soundarya (Minor)
4.Jayaooriya (Minor)
(Minors rep. by their mother & natural guardian
1st respondent)
5.Rajeshwari
6.K.Girija

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the Award dated 28th October 2007, passed by the Commissioner of Labour-II, Chennai in W.C.No.481 of 2005.

For Appellant : Mr.J.Michael Visuvasam
For Respondent : No Appearance for R1 to R4
R5,6-Not ready in Notice

ORDER

This civil miscellaneous appeal has been directed against the award dated 28.10.2007 passed by the learned Deputy Commissioner II, Chennai, fixing a sum of Rs.4,07,700/- as compensation and a sum of Rs.2500/- towards funeral expenses within 30 days failing which, along with interest at the rate of 12% from the date of accident till the date of realisation.

2. Learned counsel for the appellant would submit that the impugned order passed by the learned Deputy Commissioner II, Chennai, is against the law and evidence, since the Deputy Commissioner has erroneously passed the award for sum of Rs.4,07,700/- without any jurisdiction. Moreover, finding of the Deputy Commissioner with regard to the alleged accident that had occurred in the course of employment is unsustainable in law. Moreover, the learned Commissioner has not considered the fact that the claimants have failed to establish the employment of the deceased Suresh under the first respondent/opposite

party, the alleged employer. The learned Deputy Commissioner ought not to have passed the Award. Ex.P1 FIR filed has been wrongly relied upon by the learned Deputy Commissioner with regard to the alleged employment.

3. A reading of the FIR would clearly show that the accident took place at about 12 p.m. in the midnight on 07/08.03.2014. Therefore, the timing of the accident viz., 12 o'clock in the midnight on 07/08.03.2014, would clearly show that they have taken out the vehicle out of time. Therefore, the accident took place at 12 o'clock in the midnight of 07/08.03.2014, cannot be construed as happened during the course of employment or the said accident cannot be construed as arising out of employment.

4. Only based on the death of the bread winner of the claimants, he has wrongly allowed the claim petition fixing the

amount of compensation of Rs.4,07,700/-. But this Court finds no merit in the appeal. The reason is the counter affidavit filed by the New India Assurance Company is reproduced hereunder for the sake of the case:

"1. At the very outset this Respondent denies all the averments made in para 1 to 8 in the Application except those that are specifically admitted herein and the Applicant is put to strict proof of the same. The Applicants are also liable to prove the age, address and particulars issued in the above application.

2. At the very outset this Opposite Party submits that the above Application is not maintainable in law and on facts of the case and is without jurisdiction and has to be therefore dismissed in limine.

3. This Opposite Party denies that the Applicant cannot be considered as workman as defined under Workmen Compensation Act and is not entitled to claim compensation for the alleged accident. The Applicant is liable to prove that he was the employee under the First Respondent and the date of appointment and the monthly salary and batta drawn by him by valid document.

4. The Applicant filed this application with concocted version in order to get compensation from this Opposite Party.

5. Moreover, the time of the alleged accident is not considered as working hours and hence the Applicant cannot be considered as a workman. The First Opposite Party is solely and personally liable to pay to his employee who handed over and permitted the Applicant to

driver the vehicle in wee hours. The Applicant is also liable to prove that he had possessed valid driving licence at the time of accident.

6. The Second Opposite Party submits that the Application is false and frivolous have been no legal sanctity. This Application is not maintainable under Workmen Compensation Act. This Respondent reserves their right to file additional counter as and when the investigation report is received.

It is therefore prayed that this Application may please be dismissed in limini with costs."

5. Then, a clear perusal of the counter would show that since no plea has been taken before the Deputy Commissioner II, Chennai, it is not open to the appellant to come and say that the accident has not taken place during the course of employment. It is also admitted fact that the FIR lodged by the owner of the vehicle also clearly shows that the deceased Suresh was driving the vehicle at the time of accident. Therefore, when neither the first respondent nor the Insurance Company had established the case before the learned Deputy Commissioner II, Chennai that the accident had occurred due to rash and negligent driving, it is not open to them to find fault with the impugned Award passed by the learned Deputy Commissioner II. Therefore, the Civil Miscellaneous Appeal fails and the same is dismissed. There is no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commissioner of Labour-II,
Chennai.

+2 cc to M/s.P.D.Selvaraj, Advocate Sr.No.73629

AKM/12.12.19/3P-4C /

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