

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	29.11.2019
Pronounced On	10.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.486 of 2008

Jayanna ...Appellant/Applicant

VS

1.Ramaiah

2.The United India Insurance Co.Ltd.,
No.38, Annasalai, Chennai - 2. ...Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 02.07.2007 passed in W.C.No.126 of 2003 in the review on the file of the Deputy Commissioner for Workmen's Compensation DCL-I, Chennai 600 006 and to allow the claim application.

For appellant : Mr.K.Vasantha Mala for
Mr.U.M.Ravichandran

For R2 : Mr.C.Paranthaman

For R1 : Not ready in Notice

J U D G M E N T

The appellant is aggrieved by the impugned order dated 02.07.2007 passed by the Deputy Commissioner of Labour -I, Chennai in W.C.No.126 of 2003.

2.By the impugned order, the claim petition filed by the appellant was rejected, though the claim petition was earlier allowed by an order dated 26.04.2004. Based on the contention of the respondent/Insurance Company that there is a suppression of fact, the Deputy Commissioner of Labour-I, Chennai recalled the earlier order passed by him on 26.04.2004 and substituted the same with the impugned order dated 02.07.2007 and disallowed the claim petition filed by the appellant.

3.Heard the learned counsel appearing for the appellant and the learned counsel for the respondent/Insurance Company.

4.At the time of admission, the appellant had raised following substantial questions of law:-

- "1.Whether the Commissioner under Workmen's Compensation Act has the power to review his own order passed earlier?
- 2.Whether the Commissioner under Workmen's Compensation Act and evidence Act have the power to supercede the evidence of PW1 while corroborate RW2 and RW3?
- 3.Whether the Commissioner have the power to decide the case against the "presumption of evidence act and burden of proof"?
- 4.Whether the Commissioner have the power to decide without any pleadings or direct eye witness the appellant sustained injury in another accident?
- 5.Whether the Commissioner have the power to decide the case against the appellant because the appellant non-mentioning of earlier accident in the claim application which is not required as per model claim form 'F' given in the Workmen's Compensation Act?
- 6.Whether the Commissioner have the power to decide the case against the appellant while his decision is in favour to the main issue No.1?
- 7.Whether the Commissioner have the power to decide the case against this appellant while come to the conclusion in the course of employment the appellant met with accident and sustained injury?"

5.The learned counsel for the appellant relied on a decision of the Delhi High Court rendered in Rajbir Singh Vs S.K.S. Yadav, 1995(34) DRJ 40, wherein, the Delhi High Court has held as follows:-

"It is settled law that unless power of review is conferred by the statute on any quasi-judicial authority' or judicial authority, power of review cannot be exercised. The matter of review is not procedural in nature but power of review is in the field of substantial law but not in the field of procedural law. (See Patel Narshi Thakershi & Others Vs Pradyumansinghji Arjunsinghi). The Patna High Court in the case of Basudeo Rao Vs Jagamath Singh, 1987 Lab I.C.565, has also held that there is no

such power of review available to the Competent Authority under the Act unless the case falls within the four corners of Section 6 of the Act. Reference was made by counsel for respondents 2 & 3 to M/s.Intra Chemicals & Drugs Pvt.Ltd. Vs Smt.Rupa Narain, 1985 Lab. I.C.519. This judgment is based on different facts and thus, any thing stated in this judgment is of no help to decide the present case."

6.Per contra, the learned counsel for the respondent/Insurance Company submits that the order of the Deputy Commissioner of Labour-I, Chennai passed on 02.07.2007 is well reasoned and requires no interference in appeal. He further submits that there was an accident in respect of the same vehicle at 3.20 pm and 03.30 pm on the same day and there is a large suppression of information by the appellant while filling claim petition and therefore the Deputy Commissioner of Labour-I, Chennai who had correctly exercised the jurisdiction to recall the order dated 26.04.2004 and therefore he prays that the appeal should be dismissed.

7.I have considered the arguments advanced by the learned counsel for the appellant/claimant and the 2nd respondent Insurance Company.

8.The power to review an order passed is available only under Section 6 of the Workmen's Compensation Act, 1923 which reads as under:-

6. Review.-

(1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-

monthly payments.

9.The power to review is thus limited and under the circumstances specified in section 6 of the said Act. Once the order has been passed granting compensation under Section 4 (1) (a) (b) (c) (d) of the Workmen's Compensation Act, it cannot be reviewed. Only the remedy available to the aggrieved party was to file an appeal. In this case, instead of filing an appeal, a review application was filed and entertained by the Deputy Commissioner of Labour-1. Having passed in order granting the compensation to the appellant/claimant on 26.04.2004, the authority acting under the Act become officio and cannot review the order except under the circumstances specified in Section 6 of the said Act. There is no power vested with the Deputy Commissioner of Labour-1 to review the order otherwise than under Section 6 of the said Act.

10.As case, Section 6 of the said Act is not attracted to the facts and circumstances of the case, I am of the view, the learned Deputy Commissioner of Labour-1 erred in reviewing the order passed on 26.04.2004.

11.In Kapra Mazdoor Ekta Union vs Birla Cotton Spinning and Weaving Mills Ltd., and Another, (2005) 13 SCC 777, it was held that procedural review, the court or quasi-judicial authority having jurisdiction to adjudicate, proceeds to do so, but in doing so ascertains whether it has committed a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice has been served upon the opposite party.

12.It was further held that in case where a matter is taken up for hearing and decision on the date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case, the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceedings.

13.In the light of the above discussions, the appeal filed by the appellant/claimant deserves to be allowed.

Consequently, the order dated 02.07.2007 passed by the Deputy Commissioner of Labour-1 is set aside and the order dated 26.04.2004 passed by the Deputy Commissioner of Labour-1 is restored.

14. Accordingly, the 2nd respondent is directed to pay the compensation amount in terms of the order dated 26.04.2004. Consequently, the relief to the appellant stands allowed with the above directions.

15. The present Civil Miscellaneous Appeal is allowed with the above observations. No cost.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jas/jen

To

1. The Commissioner for Workmen's Compensation
DCL-I, Chennai 600 006.

2. The United India Insurance Co., Ltd.,
No.38, Anna Salai, Chennai-2.

Copy to:

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

+1cc to Mr.C.Paranthaman, Advocate SR.102714

C.M.A.No.486 of 2008

VG-I (CO)
CB(06/03/2020)

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