



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.06.2019
Pronounced on: 28.08.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.638 of 2013

Sait

... Appellant/ Applicant

Vs.

1.G.Velayutham

2.M/s.United India Insurance Co.Ltd.,
rep.through its,
Divisional Manager, Divisional Office,
7-A, West Veli Street,
Madurai-625 001

... Respondents/Opposite Parties

PRAYER:- Civil Miscellaneous Appeal is filed under Section 3(a) of the Workmen Compensation Act VII of 1973, against the award dated 26.07.2012 passed in W.C.No.177 of 2009 by the learned Deputy Commissioner for Workmen Compensation, Madurai.

For Appellant	:Mr.A.Theethar
For R-2	:Mr.V.J.Kumaravel
For R-1	:No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed under Section 3(a) of the Workmen Compensation Act VII of 1973, against the award dated 26.07.2012 passed in W.C.No.177 of 2009 by the learned Deputy Commissioner for Workmen Compensation, Madurai.

2. The appellant herein is the claimant in W.C.No.177 of 2009. According to him, while he was working as loadman with the first respondent herein whose tractor TN.63-A-1383/Trailer No.TN 63A-2832 met with an accident on 09.06.2009 at about 19.00 hours on Kallurani Vilakku Road, Sivagangai District in which, this appellant received personal injuries in the accident which had arisen out of and in the course of his employment. At the time of accident, he was earning Rs.5,500/- per month. Stating all these facts, he claimed a compensation of Rs.5,00,000/- before the Court below.

3. Before the Commissioner of Labour, Madurai, he examined himself as P.1 and another witness P.2 and marked seven documents as Ex.P.1 to Ex.P7 and two court documents, namely, C.1 and C.2 were



also marked. The Insurance Company neither examined any witness nor marked any documents.

4. After considering all the materials and evidences, the Commissioner of Labour, Madurai, vide his order dated 30.01.2013 made in W.C.No.177 of 2009 held that this appellant miserably failed to prove his claim and eventually, dismissed his claim. Challenging the same, the present appeal has been filed for the relief stated supra.

5. Challenging the said award, the claimant has preferred this appeal.

6. The learned counsel appearing for the appellant submitted that despite overwhelming documents adduced on the side of the appellant and more particularly, producing the medical certificate to that effect, the Tribunal erred in coming to the conclusion that he failed to prove his claim, which is not sustainable in the eye of law. Hence, he prays for setting aside the order impugned in this civil miscellaneous appeal.

6.1. In order to garner support, he relied on a judgment reported in 2012(1)TNMAC 548, Bajaj Allianz General Insurance Co.Ltd Vs. G.P.Chandrasekar and another.

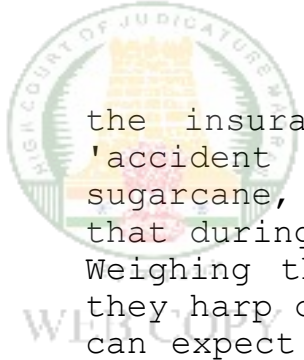
7. Per contra, the learned counsel appearing for the insurance company submitted that after elaborate discussions coupled with the documents only, the Court below came to the conclusion that the accident in question did not occur as alleged by the claimant and therefore, the order of the Commissioner does not warrant interference from any quarters and this appeal is liable to be dismissed. Hence, he prays for appropriate orders.

8. Though the first respondent was served notice, neither appeared in person nor through his counsel. Therefore, this Court has no other option but to proceed with the available material.

9. Heard the learned counsel appearing for the respective parties and perused materials available on record.

10. The only point to be decided in this appeal is whether the order of the Court below is sustainable or not?

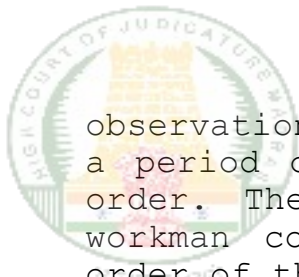
10.1. While scanning through the various documents produced by the claimant, it is seen that in the complaint receipt (Ex.P.1), the Certificate issued by the Inspector of Police, Sivagangai and even during cross-examination, the appellant geographically narrated and proved the manner of accident. To strengthen the same, the appellant had taken treatment in a private hospital and marked various documents, including X-Ray, Disability Certificate, case sheet and discharge summary etc, which is also not disputed by the second respondent with documentary evidence. The only grievance of



the insurance company is that the appellant has stated in the 'accident register report' that at the time of loading the sugarcane, he received injuries and there is no specific averment that during the course of the employment, the accident had occurred. Weighing the evidence, the entry in the accident register report, they harp on the point. Generally, in the matter of accident, no one can expect pictorial event of the accident stage by stage. Further, the accident register alone is not an encyclopedia to decide the case which is evident from the judgment stated supra. The accident can never be described in a verbatim manner. It is the duty of the police officer to cull out the truth. In the case at hand, during his cross-examination, the appellant had given his deposition that he did not know the time of admission in the hospital during the course of the accident. When such is the situation of the claimant, it is a common that at the time of admitting a person, the real intention is to save a person and not to describe the manner of the accident by lock, stock and barrel. Therefore, the second respondent cannot wriggle out from his dutiful responsibilities by saying that in the accident register report, it is stated that it is an "occupational injury", that too, the first respondent never disputed the fact in black and white. After all, the claimant in this case is a loadman and his level of understanding the consequences cannot be equated with an erudite. The insurance company has not pointed out any violation of the policy of terms and conditions. The vehicle involved in the accident is duly insured with the second respondent. On perusal of the papers placed before this Court, it is seen that during the course of the employment only, the accident had occurred in which, this appellant had received personal injuries.

11. Unless the insurance company rebut the evidence of the appellant, with the documentary evidence, they are duty bound to honour the claim. The insurance company should have taken steps to examine the first respondent to prove that the appellant is not an employee of the first respondent. To sum up, all would go to show that the court below failed to appreciate the oral and documentary evidence in a proper perspective to sustain his claim. Since this Court has found that the accident happened only during the course of employment, the claimant is entitled for compensation. In the considered view of this Court, in the matter of Workmen Compensation claim, this Court generally expects to be liberal and lenient to lay stretch its hands to the genuine claimants. Further, it is worthwhile to mention that it is a beneficial legislation and through out the case, the appellant has taken a specific stand that he worked under the first respondent and injuries caused during the course of the employment, who in turn, did not choose to appear and deny the manner of accident. The same is also echoed in the documents marked by him. Therefore, this Court has no option but to set aside the order impugned in this Civil Miscellaneous Appeal.

12. Accordingly, this civil miscellaneous appeal is allowed and the matter is remitted back to the Workman Compensation Commissioner, Madurai for passing necessary award in line with the



observations made in this order. Such exercise shall be done within a period of two months from the date of receipt of copy of this order. The Registry is directed to return the documents to the workman commissioner forthwith to enable him to comply with the order of this Court. No costs.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1.The Commissioner for Workmen Compensation,
Madurai.

2.The Record Keeper, (2 Copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.THEETHAR, Advocate (SR-71173[F] dated 25/06/2019)

+1 CC to M/s.V.J. KUMARAVEL, Advocate (SR-83953[F] dated 28/08/2019)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-84130[F] dated
29/08/2019)

judgment made in
C.M.A(MD) No.638 of 2013
28.08.2019

ssm

MS/16.09.2019/4P.7C