

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3587 of 2013 and
M.P.No.1 of 2013

The Divisional Office,
M/s.New India Assurance Co.Ltd.,
Raja Rajeswari Towers,
New No.51, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004. ... Appellant/2nd Opp. Party

Vs.

1.V.Kannan ... 1st Respondent/Applicant

2.K.Kalyana Sundaram ... Respondents/1st OPP. Party

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order in W.C.No.132 of 2009 dated 13.02.2013 on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour-II, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.Richard Suresh Kumar for R1
No appearance for R2

J U D G M E N T

This civil miscellaneous appeal is filed against the order passed in W.C.No.132 of 2009 dated 13.02.2013 on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour-II, Chennai.

2. The substantial question of law mainly raised in the appeal is that whether the Deputy Commissioner of Labour is right in awarding compensation despite the fact that the accident itself was not established. It is contended that there is no document to establish that the accident occurred and the Deputy Commissioner of Labour presumed the accident and

proceeded with the case and granted compensation, which is perverse. The Trial Court has not considered the serious lapses and contradictions as well as the documents filed before the Court relating to the occurrence of the accident.

3. New India Assurance Company Limited is the appellant and the first respondent filed a claim petition on the ground that on 17.10.2008 at about 00.30 hours, while the claimant was on duty, he filled up the diesel into the Tanker lorry at I.O.C., Korrukupet, Chennai and came out from I.O.C. and stopped near out of the I.O.C. Company for food. After completion of food, he came to the Tanker lorry and tried to climb up the lorry, but his legs slipped and fallen down from the lorry and sustained grievous injury. The discharge summary and the radiology report issued by the A.P.Jain Clinic and Lab, Chennai, and the accident register were marked as documents.

4. The appellant Insurance Company defended the case by filing a counter statement, wherein, they raised a point that there was a huge delay in registering FIR, more specifically, 39 days. The alleged accident occurred as per the respondent claimant was on 17.10.2008 and the FIR was admittedly registered on 24.11.2008. However, the delay was not explained properly. The claimant has not explained the factum of the alleged accident "due to fallen down from the lorry" and no entry was made in the accident register in A.P.Jain Clinic and Lab. If at all the accident occurred, the same would have been registered either in the accident register or atleast in the discharge summary. However, no such indications are found in the medical documents and therefore, the very factum regarding the accident itself was not established beyond any doubt. In view of the fact that there is no mentioning about any accident in the medical records, any other injuries sustained cannot be construed as an injury sustained during the course of the employment involving the vehicle. Thus, the basic factum regarding the accident was not established and therefore, the Deputy Commissioner of Labour has committed an error.

5. The appellant Insurance Company further contended that the respondent claimant had not issued any notice of claim in terms of Section 10(1) of the Employees' Compensation Act, seeking compensation from the appellant. This itself will prove that there is no master - servant relationship between the claimant and the second respondent. There was no information regarding the accident involving the vehicle bearing Registration No.TN 01 P 3811 on 17.10.2008. In view of the fact that there was no information about any such accident involving the vehicle, thus, the Insurance Company cannot be held liable with reference to the policy issued.

6. The Deputy Commissioner of Labour adjudicated the issues. The findings of the award reveals that the Deputy Commissioner of Labour proceeded on the basis that the respondent claimant sustained injuries and undertook treatment. FIR was taken into consideration for the purpose of grant of compensation. With reference to the delay in registering FIR, the Deputy Commissioner of Labour formed an opinion that the first respondent claimant was admitted in the hospital for taking treatment and the delay is understandable. In view of the fact that the accident was established and the policy coverage was also proved, the Deputy Commissioner of Labour granted compensation.

7. This Court is of the considered opinion that undoubtedly the respondent claimant was admitted in hospital and had taken treatment. Mere taking treatment in hospital is insufficient to establish the accident. In order to satisfy the terms and conditions of the insurance policy in respect of the vehicle, it is to be established that the accident occurred and the accident occurred involving the vehicle which was insured in the Insurance Company. If these factors are not established, then, there is no reason to fix liability on the Insurance Company and in respect of the injuries, if at all occurred during the course of the employment, then, the liability is to be fixed on the employer, but, certainly not on the Insurance Company.

8. In the present case, Ex.P2 Radiology report issued by the A.P.Jain Clinic and Lab, there is no mention about any such accident. Even in the discharge summary issued by the Department of Orthopedic Surgery, Government Royapettah Hospital, Chennai, there is no indication about any such accident. In fact, there is a contradiction in mentioning the case as MLC/Non-MLC. Initially, it was marked as Non-MLC and subsequently, that mark was struck off and underlined as MLC. Therefore, some corrections carried out on the discharge summary without any counter signature, cannot be trusted upon. Even in case of such corrections, there must be a counter signature by the competent authority or the nature of the case may be clearly indicated . But, here the manner in which it was underlined as MLC, is raising a doubt and therefore, based on such discharge summary, this Court is unable to arrive a conclusion that the accident was established. Beyond that, the discharge summary did not speak about any such accident or the nature of the injury or the injury sustained during the accident.

9. Further, the accident register reveals that the case was registered on 29.10.2008. However, as per the respondent claimant, the accident occurred on 17.10.2008. In view of the contradiction regarding the date of the accident, the accident register cannot be relied upon. This apart, as per the entries made in the accident register, the respondent claimant went for

treatment on 22.10.2008. When the accident occurred on 17.10.2008, how the respondent had gone for treatment on 22.10.2008 and the said factors were not explained. This apart, as per the claim petition, the accident occurred on 17.10.2008. However, Ex.P2 document was issued by the A.P.Jain Clinic and Lab on 16.10.2008, one day prior to the alleged accident as per the respondent claimant. These facts are contradictory and the accident was not established beyond any pale of doubt. The documents are not co-related with the facts stated in the claim petition.

10. Therefore, this Court has no hesitation in arriving a conclusion that the Deputy Commissioner of Labour failed to consider all the factual contradictions with reference to the occurrence of the accident. Under these circumstances, this Court is inclined to consider the appeal.

11. Accordingly, the award passed in W.C.No.132 of 2009 dated 13.02.2013, is set aside and C.M.A.No.3587 of 2013 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

12. The appellant Insurance Company is permitted to withdraw the deposited award amount with accrued interest by filing an appropriate application and payments are to be made through RTGS.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Commissioner for Workmen Compensation,
Deputy Commissioner of Labour-II,
Chennai-6.
2. The Section Officer, VR Section,
High Court, Madras.

C.M.A.No.3587 of 2013 and
M.P.No.1 of 2013

GMI (CO)
GMY (01/07/2021)