

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM

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

C.M.A.No.1563 of 2018

Joseph Divyanathan

... Appellant

Vs.

1.K.Kannan

2.National Insurance Company Limited,

Rep by its Manager, 74-A, Paramathi Road,

Namakkal 637 001.

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, to set aside the order made in W.C.No.133 of 2015 on the file of the Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Coonoor dated 13.02.2017.

For Appellant : Mr.C.Kulanthaivel

For Respondents : Ms.R.Janani for

Mr.J.Chandran for R2

J U D G M E N T

The award dated 13.02.2017 passed in W.C.No.133 of 2015, is under challenge in the present appeal.

2. The substantial question of law raised is whether the claimant or appellant was sustained grievous injury during the course of employment. Whether there is an employee employer relationship as between the first respondent and the claimant/appellant. These questions of law are related to the factual aspects.

3. This Court is of the considered opinion that the point raised in the appeal is that whether the accident was established or not. As per the application filed by the appellant, he was working as a driver with the first respondent and was drawing a salary of Rs.15,000/- per month, apart from, a sum of Rs.200/- per day as a daily batta.

4. On 19.12.2012 at about 4.30 p.m. the appellant sustained injury while unloading the cotton seed bundles and more specifically, when the rope was removed from the tharbai, the bundles fell down which resulted in injuries to the appellant.

5. The learned counsel for the appellant submitted that the appellant sustained multiple injuries and has taken first aid treatment in Ahmedabad and thereafter, admitted in Ganga Hospital, Coimbatore as inpatient. Thereafter, the appellant became permanently disabled.

6. The Deputy Commissioner of Labour adjudicated the issues and arrived at a finding that the factum regarding the accident was not established and it was not established that the accident occurred during the course of the employment. The award states that the appellant had not submitted any record to establish that he had taken treatment at Siddhi Vinayak Hospital at Ahmedabad. In view of the fact that there is no sufficient documents to establish that the appellant had taken treatment in Hospital at Ahmedabad, it is not possible to arrive at the conclusion that the factum regarding the accident was established.

7. This Court is of the considered opinion that for the purpose of granting compensation under Workmen Compensation Act, a prima facie regarding the occurrence of the accident is to be established beyond any pale of doubt. In the event of any doubt in the accident, the Deputy Commissioner of Labour may not be in a position to grant compensation. When the accident is established beyond any doubt, then alone the Deputy Commissioner of Labour is empowered to consider and grant compensation and not otherwise.

8. In the present case, the appellant states that he sustained injury at Ahmedabad while unloading the cotton seed bundles and taken first aid treatment at Ahmedabad. Thereafter, he taken treatment at Ganga Hospital, Coimbatore. Therefore, the link between the first aid and subsequent treatment is to be established by the appellant, so as to remove any ambiguity. In the present case, the appellant has not established the link between the treatment taken in Ahmedabad to Ganga Hospital, Coimbatore. If at all he sustained grievous injuries, then how he travelled from Ahmedabad to Coimbatore and the mode of transport is to be produced to enable the Court to understand the genuineness of the case. In the absence of any details, this Court is not inclined to grant compensation in the present case. The Deputy Commissioner of Labour has rightly weighed the documents and evidences. There is no infirmity or perversity as such.

9. Accordingly, the order dated 13.02.2017 in W.C.No.133 of 2015, stands confirmed. C.M.A.No.1563 of 2018 stands dismissed. No costs.

Sd/-

Assistant Registrar (CS.VII)

/True Copy/

Sub Assistant Registrar

To

The Workmen's Compensation Commissioner
cum Deputy Commissioner of Labour, Coonoor.

+1cc to Mr.J.Chandran, Advocate Sr.NO.5420

+1cc to Mr.C.Kulanthaivel, Advocate Sr.No.5029

AKM/17.03.21 /2P-4C/

akm/30.03.21 /2p-4c/

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