



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.12.2020

Delivered On : 21.01.2021

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CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

C.M.A. (MD)No.1438 of 2010

and

M.P. (MD)No.1 of 2010

The Branch Manager,
Bajaj Allianz General Insurance Co.Ltd.,
Madurai - 10.

... Appellant/2nd Respondent

Vs.

1.Akkeem
2.Alaudin

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, against the award, dated 23.04.2010 received on 03.09.2010, made in W.C.No.369 of 2006, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : Mr.K.Govindarajan for R1
: No appearance for R2

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 23.04.2010, made in W.C.No.369 of 2006, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy.

2.The case of the claimant, who is the first respondent herein, before the Commissioner is as follows:

The claimant was a Driver engaged for driving a minidoor Auto bearing Registration No.TN-45-AC-6480 and on 29.11.2005, he drove the vehicle from Trichy to Ulundurpettai on the Trichy-Chennai Trunk Road and at that time, the vehicle capsized, as a result of which, the claimant suffered multiple injuries and he was taken to Ulundurpettai Government Hospital and later, shifted to K.M.C. Hospital, Trichy. He was aged about 25 years, at the time of the accident and was getting



Rs.6,000/- p.m as monthly salary. Subsequent to the occurrence, he could not continue the driving work as before and claiming compensation of Rs.4,00,000/-, he approached the Workmen Compensation Commissioner.

3.The first respondent, who is the second respondent herein, did not appear before this Court either in person or through a counsel.

4.The case of the second respondent, who is the appellant herein, before the Commissioner is as follows:

The claimant was not employed by the owner as a Driver for the vehicle. The other facts set out by the claimant were denied as false.

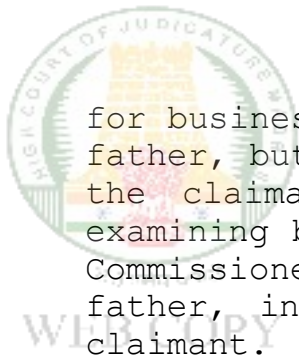
5.Before the Commissioner, on the side of the claimant, two witnesses, were examined as P.W.1 and P.W.2 and nine documents marked as Ex.P1 to Ex.P9. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and five documents marked as Ex.R1 to Ex.R5.

6.The Commissioner, after analysing the evidence, came to the conclusion that the claimant was employed as paid employee on the first respondent/ second respondent herein and the accident arose during and in the course of employment and regarding compensation, the Tribunal fixed the same at Rs.1,83,515/- and directed the Insurance Company/appellant herein to pay the amount. So, challenging the award, the Insurance Company/ appellant herein has filed this Appeal, mainly on the ground that the claimant being the son of the first respondent/ second respondent herein, who is the owner of the vehicle, was not an employee and the petition has been filed suppressing the real relationship and the disability suffered by the claimant is also put under challenge.

7.It is unfortunate that the claimant has suffered disability and the very fact of his employment is under his father, who is the owner of the vehicle, in the claim petition. So, this suppression of the fact in the claim petition gave raise to subsequent suspicion with regard to his claim.

8.The learned counsel for the claimant/ first respondent herein would argue that the first respondent / second respondent herein as well as the claimant/ first respondent herein were living separately, subsequent to the marriage, which is also evident from the Ration Card and employer and employee relationship between father and son that too after marriage is not remote and it occurs in every day life.

9.It is quite acceptable to say that subsequent to the marriage of the son, there would be separate family and there is nothing

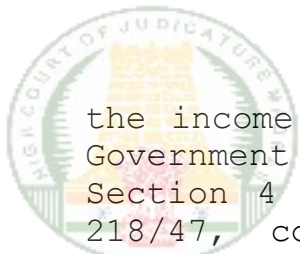


for business purpose. It is not unusual to pay monthly salary by the father, but, the main contention on the part of the appellant is that the claimant failed to prove the employment with his father by examining by him as a witness. The father did not appear before the Commissioner and remained ex-parte, so, non examination of the father, in my considered view, should not affect the case of the claimant.

10. So, simply because the relationship has been suppressed in the petition, he should not be penalised. R.W.1, who is the Investigator, has conducted a private investigation and has filed his report also. He had admitted in his evidence that the first respondent informed him that the claimant was receiving Rs.3,000/- per month towards salary under him and were residing separately. So, the information furnished by the first respondent, R.W.1 can be taken into account, because the Tribunal is not bound by the strict rules of evidence. From the information furnished by the first respondent, to R.W.1, the possibility of his employment, under his father on monthly salary, can be taken as a probability.

11. The non-filing of the criminal complaint, subsequent to the occurrence need not be given any importance, because, the vehicle belongs to the first respondent, who is the father of the claimant and the vehicle capsized in the course of travelling in the road, but, the occurrence can be believed from the medical records, which was produced as Ex.P1, which is the Accident Register copy of Ulundurpettai Government Hospital, wherein, it has been noted that it is a case of road accident and the claimant was admitted on 29.11.2005 for the fracture on the right forearm and he was referred to Higher Institution, for further treatment. It has also been noted that the claimant suffered injury due to the road traffic accident when it capsized at about 04.15 p.m., on the National Highway. He was subsequently, taken to KMC Hospital, Trichy, where, he was admitted on 30.11.2005 and on 10.12.2005 was discharged on 30.11.2005 and he underwent surgery at the time of the admission he was found that with a crush injury on the right forearm. This document is more than sufficient to prove that he had sustained injury in the accident. So, the accident cannot be doubted or disputed by the claimants. So, it is established that the accident took place when the claimant was driving the vehicle during and in the course of his employment and the injuries suffered out of the accident that took place during and in the course of employment. so, the finding of the Commissioner on this aspect, does not require any interference.

12. With regard to the compensation, the Commissioner took into account the evidence of P.W.2 the Doctor, who would say that there was a restriction of 35 degree in the movement and 55 degree in the rotation in the forearm region and there is a permanent scar measuring 4x4 inches and there is no sensation in that region. So, he assessed the disability at 42% by taking into account the age and



the income was fixed on the basis of the minimum wages fixed by the Government at Rs,.4,051/-, which was restricted to Rs.4,000/-as per Section 4 of the Workmen Compensation Act. The unit was taken as 218/47, considering the age of the claimant. So, the total compensation was fixed at Rs.1,83,514.80/- paise, which was rounded off to Rs.1,83,515/-. Considering the nature of the injuries suffered by the claimant, the assessment made by the Doctor, which is corroborated by the photographs is accepted to be correct. So, I find that there is no reason to interfere with the compensation fixed by the Tribunal.

13. Accordingly, the Appeal is dismissed and it is represented that the amount has been deposited by the appellant and the claimant is permitted to withdraw the same, immediately, after filing proper petition. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS-)

To

1. The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour), Trichy.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to Mr.K.GOVINDARAJAN, Advocate (SR-1992[F] dated 25/01/2021)

LS

TE : 10/02/2021 : 4P/5C

Order made in
C.M.A. (MD)No.1438 of 2010 and
M.P. (MD)No.1 of 2010
21.01.2021