



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.08.2021
Delivered on : 22.09.2021

WEB COPY

CORAM:
THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.M.A(MD) No.1176 of 2013
and
M.P.(MD) No.1 of 2013

Royal Sundaram Alliance Insurance
Company Ltd.,
No.6, Surronto Building,
LB Bridge Road, Adyar,
Chennai.

... Appellant / 2nd Respondent

Vs.

1.Lattu
2.Ganesan

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workman Compensation Act, against the award dated 28.11.2012 made in W.C.No.260 of 2010, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : No appearance

JUDGMENT

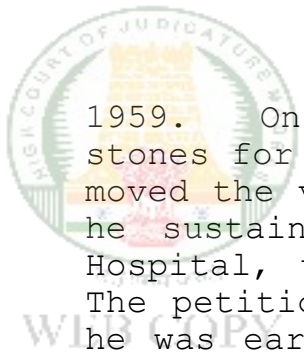
This Civil Miscellaneous Appeal is filed against the award, dated 28.11.2012, made in W.C.No.260 of 2010, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original claim petition. The first respondent herein / claimant filed a petition in W.C.No.260 of 2010.

3.Brief substance of the petition in W.C.No.260 of 2010, is as follows:-

The petitioner was working as a load man in a vehicle that belonged to the first respondent bearing Registration No.TN-52-A-

<https://hcservices.ecourts.gov.in/hcservices/>



1959. On 26.07.2010, when the petitioner was unloading Marble stones for the construction work, the driver of the Vehicle suddenly moved the vehicle and the Marble stones fell on the petitioner and he sustained injuries. He took treatment in Musiri Government Hospital, then, he took treatment in Geethanjali Hospital, Trichy. The petitioner was aged about 55 years at the time of accident and he was earning Rs.5,000/- per month. The accident was during the course of employment. The vehicle was insured with the second respondent. The petitioner claimed a sum of Rs.4,00,000/- as compensation.

4.Brief substance of the counter filed by the first respondent in W.C.No.260 of 2010, is as follows:-

The petitioner did not sustain injury during the course of employment. There is no relationship of employer and employee between the petitioner and the first respondent. The first respondent is not liable to pay compensation and prayed the petition to be dismissed.

5.Brief substance of the counter filed by the second respondent in W.C.No.260 of 2010, is as follows:-

The date of accident, manner of accident, place of accident and nature of injuries are all denied. The accident was not during the course of employment. The age, income and profession of the petitioner are all denied. It was the petitioner, who invited the accident. There was no relationship of employer and employee between the petitioner and the first respondent. The claim is excessive.

6.On the side of the petitioner, three witnesses were examined and seven documents were marked. On the side of the respondents, one witness was examined and no document was marked.

7.After considering both sides, the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy, awarded a compensation of Rs.2,80,3842/-. Against that award, the second respondent / appellant has filed the Civil Miscellaneous Appeal.

8.On the side of the appellant, it is stated that the liability should be fixed on the part of the owner and not on the part of the Insurance Company. There was no employer and employee relationship between the injured and the first respondent and in the absence of such relationship, the claim under the Workmen Compensation Act is not maintainable. When there is no relationship of employer and employee, the accident was not in the course of employment or arising out of employment. F.I.R cannot be taken as a proof for presumption of employment. The finding of the Commissioner as to the employer and employee relationship is perverse. The quantum is excessive.



9.The learned counsel for the appellant has raised the following questions:

(i)Whether the learned Commissioner for Workmen Compensation committed an error by allowing the application under the Workmen Compensation Act even without proving the relationship of employer - employee between the owner of the vehicle and the injured claimant?

(ii)Whether the learned Commissioner of Workmen Compensation is competent to allow a claim application under the Workmen Compensation Act even when there is no proof of employer - employee relationship between the owner of the vehicle and the injured claimant and when there is no proof that the accident in question took place in the course of or arising out of the alleged employment?

(iii)Whether the findings of the learned Commissioner for Workmen Compensation be sustained for the reason that they are rendered by perverse application of material and evidence available on record?

10.Name of the respondents was printed and called upon. Though sufficient opportunity was given none appeared for the respondents. Hence, no oral argument on the side of the respondents is recorded and the order is passed on merits.

11.It is seen that the owner of the vehicle has denied the employer and employee relationship between himself and the injured claimant, he has not chosen to argue this Appeal. It is seen that in the F.I.R, it was stated that the injured was working as a load man at the time of accident. R.W.1 /Vaitheeswaran was examined on the side of the appellant herein. He had deposed that two load men were injured in the accident and he has admitted that premium was paid for six load man. The first respondent in his evidence has deposed that his vehicle was insured and policy covers driver, cleaner and six load man and he has admitted that the driver of the vehicle admitted his guilty before the Court and he paid fine. He has further admitted that narration of accident as mentioned in the F.I.R is correct.

12.P.W.3 has deposed that the claimant was working as a load man and the accident took place during the course of employment. So, from the evidence of P.W.3, and from the evidence of R.W.1 and from Ex.P1/ F.I.R., it is decided that the injured was working as a load man and the accident was during the course of employment. Hence, it is decided that the finding of the Commissioner for Workmen Compensation, is based on the materials and evidence available on records and the finding is not perverse. The other questions raised by the appellant are not questions of law.



13. In view of the above discussion, it is decided that there is nothing sufficient enough to interfere in the orders of the Deputy Commissioner of Labour, Tiruchirappalli. Hence, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

To

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

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-29971[F] dated 22/09/2021)

C.M.A(MD) No.1176 of 2013
22.09.2021

RK (30.09.2021) 4P 5C