



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	20.01.2021
Date of Judgment	23.03.2021

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CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.28 of 2015

and

MP(MD)No.1 of 2015

The Branch Manager,
United India Insurance Company Limited,
Seethalakshmi Complex,
Tirunagar, Madurai-625 0006.

: Appellant/2nd Respondent

Vs.

1.V.Athimuthan @ Athimuthiah

: R1/Petitioner

2.N.Nagarajan

: R2/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 30 of Workman Compensation Act, against the award, dated 14.11.2014 made in WC No.81 of 2008 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.

For Appellant : Mr.J.S.Murali

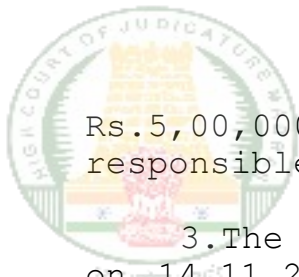
For 1st Respondent : Mr.R.Sundararaj

For 2nd Respondent : Died, vide order,
dated 26.06.2018

JUDGMENT

Challenge made in this appeal is to the award, dated 14.11.2014 made in WC No.81 of 2008 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.

2.The claimant is a load man in the Lorry TN-47-A-0059, which belongs to the 2nd respondent herein and on 30.10.2007, when he was loading seeds packages into the lorry, the driver of the lorry suddenly drove it and due to the impact, the claimant has lost balance and fell on the foot slap and it was broken, the claimant fell into the ditch and due to which, he sustained multiple grievous injuries. The claimant, who suffered injury sought compensation of



Rs.5,00,000/- on the ground that the driver of the Lorry was responsible for the accident.

3.The learned Deputy Commissioner of Labour has passed an award on 14.11.2014 for a sum of Rs.1,48,268/- directing the appellant Insurance Company to pay the compensation. Challenging the award of the tribunal, the Oriental Insurance Company as appellant is before this court.

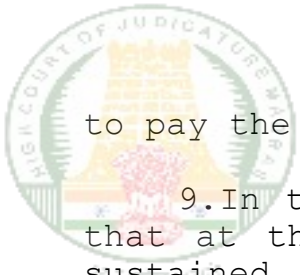
4.This Civil Miscellaneous Appeal was admitted on the substantial question of law that "Whether the Commissioner was correct in coming to the conclusion that there existed employer-employee relationship between the claimant/1st respondent and the 2nd respondent?"

5.Heard both sides and perused the materials available on record.

6.The dispute is only with regard to liability. The learned counsel appearing for the appellant/2nd respondent submitted that the injury caused to the claimant had not arisen, out of and in the course of his employment with the 2nd respondent and there was no existence of employee and employer relationship between the claimant and the 2nd respondent and the FIR was registered after 16 days from the date of the accident and further, the criminal case filed as against the driver of the 2nd respondent was referred as "Mistake of Fact" by the police officials and it is a fake claim made by the claimant and in the earlier medical records, it was stated that a stone has fell down on the claimant and thereby the claimant sustained injuries and the disability determined by the Doctor is higher on the side and hence, the appellant/2nd respondent is not liable to pay any compensation to the claimant and prays that the Civil Miscellaneous Appeal may be allowed.

7.On the side of the 1st respondent/claimant, it is argued that the claimant was working as a load man and when the claimant loaded the gunny bags containing rye, the driver of the lorry took the vehicle suddenly in a rash and negligent manner and due to it, the claimant fell down into the sewerage channel and sustained injuries in the course of employment. There was employer and employee relationship between the 2nd respondent/1st respondent and the claimant and the accident occurred in the course of employment. Hence, the appellant/2nd respondent is liable to pay compensation and the final report in the criminal case was not served on the 1st respondent/claimant and hence, it will not be liable on him and prays that the Civil Miscellaneous Appeal may be dismissed.

8.The main contention raised on the side of the appellant/2nd respondent is that the accident was not occurred out of and in the course of employment and hence, the Insurance Company is not liable



to pay the compensation.

9. In this case, the claimant was examined as PW1. PW1 deposed that at the time of accident, he was working as load man and he sustained injuries out of employment. To prove that the criminal case was closed as "Mistake of Facts, on the side of the Insurance company, the police official of M.Kallupatti Police Station was examined as RW1. RW1 stated during his evidence that on the basis of the complaint, the police investigated the case and filed a final report as "Mistake of Fact". RW1 stated that the criminal case was closed as "Mistake of Fact". But no document was filed on the side of the appellant/2nd respondent to prove that the final report was produced before the criminal court and the criminal court accepted the final report and passed orders. But RW1 during his cross examination stated as follows:-

“நான் சிடி பைலின் இறுதி அறிக்கையை மட்டும் தாக்கல் செய்துள்ளேன் என்றால் சரி பொதுவாக ஆர்சி வழக்கை பிழையுடைய வழக்கு என்ற முடிவு விசாரணைக்கு எடுக்கும்போது புகார்தாரருக்கு அறிவிப்பு அனுப்ப வேண்டுமென்றால் சரிதான்.”

10. On perusal of the cross examination of RW1, it reveals that RC notice was not served on the claimant. Without serving notice to the claimant, the police has filed a final report. Further, no document was filed on the side of the Insurance Company to prove that on the basis of the final report, the criminal case was closed as "Mistake of Fact". Hence, the argument put forth on the side of the appellant/2nd respondent stating that the criminal case was closed as "Mistake of Fact" and they are not liable to pay compensation to the claimant is not at all acceptable.

11. On perusal of the FIR and the evidence of PW1, it reveals that the claimant sustained injury, while he was loading the gunny bags into the 2nd respondent vehicle and fell down into the sewerage channel. RW1 during his cross examination admitted that during his investigation, he found that the claimant was a load man. Hence, it is held that the claimant is a load man at the time of accident and he sustained injury, when he was loading the gunny bags into the lorry and hence, it is held that the accident occurred out of and in the course of employment. The appellant/2nd respondent failed to disprove the above facts. Hence, it is held that there was employee and employer relationship between the 2nd respondent/1st respondent and the claimant and the accident occurred in the course of employment. Accordingly, the substantial question of law is answered against the appellant and in favour of the 1st respondent/claimant.

12. For all the reasons stated above, this court is of the considered view that the impugned order, dated 14.11.2014 passed by the Workmen Compensation (Deputy Commissioner of Labour), Madurai, is correct. Accordingly, it is confirmed.



13. In the result, this Civil Miscellaneous Appeal is **dismissed**.
No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(CS-II)

/ /2021

Sub Assistant Registrar(CS)

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To

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

Copy to
The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai(2 copies).

+1 CC to M/s.J.S.MURALI, Advocate (SR-13196[F] dated 24/03/2021)

C.M.A(MD)No.28 of 2015
23.03.2021

pm(CO)
TR(08.04.2021) 4P 5C