



CMA(MD) No.1335 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On : 24.08.2022

Delivered On : 10.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.1335 of 2012
and M.P.(MD)No.1 of 2012

Bajaj Allianz General Insurance Company Ltd.,
K.K.A. Complex, 12-G, Ram Nagar,
Bye pass Road, Madurai – 620 010. Appellant / Claimant
Vs.

1.P.Saravanan ... 1st Respondent / Petitioner
2.Velsankar ... 2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award, dated 30.03.2012, made in W.C.No.60 of 2009, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli, received on 26.02.2012.

For Appellant	: Mr.D.Srinivasaraghavan
For R1	: Mr.Niranjan S.Kumar
For R2	: No appearance



CMA(MD) No.1335 of 2012

JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal is filed against the award, dated 30.03.2012, made in W.C.No.60 of 2009, on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Tirunelveli. 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 main claim petition.

2. Brief substance of the petition, in W.C.No.60 of 2009, is as follows:-

The claimant is working as a Supervisor in the Company of the first respondent and he is earning Rs.7,488/- per month. On 03.08.2005, when the petitioner was walking along the left side of the road, a two wheeler came in a rash and negligent manner, dashed against the claimant. He sustained injury and he was admitted in Poonamallee Sundar Hospital and he took treatment for 3 days as inpatient. He spent Rs.2,25,000/- for medical expenses. The petitioner was disabled and could not do any work and the petitioner claimed a sum of Rs. 10,00,000/- as compensation.



WEB COPY

3. Brief substance of the counter filed by the first respondent, in W.C.No.60 of 2009, is as follows:-

The petitioner has to prove the profession, age and income. The manner of the accident is denied. The petitioner is the tort feaser. The first respondent has taken an Insurance Policy with the second respondent. The second respondent is liable to pay compensation.

4. Brief substance of the counter filed by the second respondent, in W.C.No.60 of 2009, is as follows:-

The petitioner has to prove the averments mentioned in the petition. The age, profession and income are all denied. The manner of accident is denied. The treatment particulats, medical expenses are all denied. The accident did not take place during the course of employment. The policy is not valid for the claimant for the claim under this Act. The second respondent is not liable to pay any compensation.

5. On the side of the petitioner, 2 witnesses were examined and 8 documents were marked. On the side of the first respondent, no witness was examined and no document was marked. On the side of the second



CMA(MD) No.1335 of 2012

respondent, 4 witnesses were examined and 1 document was marked.

The Labour Commissioner, after considering both sides, awarded a sum of Rs.1,96,623/- as compensation and the first respondent was ordered to pay Rs.65,541/- and the second respondent was ordered to pay Rs.1,31,082/-.

6. Against the order, the second respondent / appellant has filed this appeal on the following grounds:-

The Labour Commissioner failed to consider that the claimant was not a Workman under the provisions of this Act. If supervisor was drawing a salary more than Rs.7,500/- and he is not a workman and the policy of Insurance did not cover the claimant. The nature of employment of the injured is not a workman. The place of occurrence is not within the factory premises. The salary of a claimant should not be more than Rs.4,000/- under the Workman Compensation Act. The claimant was a Supervisor, earning more than Rs.4,000/-. Hence, he has to be treated as working in a Managerial capacity and he cannot be named as a Workman. The quantum of compensation was also limited. The Labour Commissioner is wrong in fixing the salary of the Supervisor to Rs.2,000/- + Rs.1,000/- for the purpose of the computing the amount.



CMA(MD) No.1335 of 2012

Dividing the salary of the injured persons as Rs.2,000/- + Rs.1,000/- is against the workmen compensation Act. The medical practioner is a stack witness and the disability certificate is not valid. Fixing loss of earning capacity at 50% is arbitrary. The Workman Act is not applicable to the claimant.

7. This Court, by order dated 07.11.2012, admitted the Appeal on the following substantial questions of Law:-

(i) Whether a Supervisor earning more than Rs.7,000/- pm., and working in a managerial capacity in a factory be deemed to be a workman under the Workmen Compensation Act?

(ii) Whether the findings of the learned Commissioner are sustainable, wherein, it has been found to be an accident during the course of employment when the accident took place outside the area of operation?

(iii) Whether the learned Workmen Compensation is justified in holding that the term “Yard Supervisor ” referring to a workman would include a Supervisor who works in a managerial capacity and draws more than a sum of Rs.7,000/- as monthly salary under the provisions of the Workmen Compensation Act?



CMA(MD) No.1335 of 2012

Issue Nos.i & iii:

8. On the side of the appellant, it is stated that the claimant was a supervisor and he was not a Workman, under the workman compensation Act, as he was designated as a supervisor. The salary and the nature of employment will not cover liability under the Workmen Compensation Act.

9. On the side of the first respondent, it is stated that there was no pleadings in the counter before the Labour Court, regarding the nature of employment. Though he was designated as supervisor, he was only doing the work of a workman and the nature of work is only that of the workman.

10. On the side of the appellant, it is stated that the claimant was working in the supervisor capacity and he has to be treated as doing managerial post and he has not a workman.

11. It is seen that the claimant was designated as a Supervisor. The claimant is not a manager (administrative) or manager (finance). So, he



CMA(MD) No.1335 of 2012

was not doing any administrative work. The work of the claimant is to supervise the yard. Hence, considering the nature of the job, the claimant cannot be named as doing management work and hence, it is decided that the claimant is not doing mangement work.

12. On the side of the appellant, it is stated that the salary of the claimant is more than Rs.4,000/- (ie.Rs.7,488/-), only a person, who get a salary less than Rs.4,000/- can be named as a workman and the Workmen Compensation Act is not applicable to the claimant.

13. On the side of the appellant, it is stated that in the year 2005, the income of the Workman was fixed only as Rs.4,000/-. Only in the year 2011, it was enhanced to Rs.8,000/- and in the year 2019, it was enhanced to Rs.15,000/-.

14. A perusal of the records reveals that the Insurance policy was taken for 6 Labourers 2 Yard supervisors and 1 lift operator. Since the premium was paid for yard supervisors, the contention of the appellant is not reasonable.



CMA(MD) No.1335 of 2012

15. Hence, the Issue Nos.(i) and (iii) raised by the appellant are unsustainable.

Issue No.(ii):

16. On the side of the appellant, it is stated that the place of occurrence is not the premises covered under the Act. The policy was taken only to cover the yard, but, the claimant sustained injuries on the road and hence, the accident cannot be in the course of employment.

17. The claimant was attending the yard work, then, he was going to the Company. Hence, the claimant was in the course of employment. This question is a question of fact and not a question of law. Hence, this question is not sustainable.

18. In the above circumstance, there is nothing sufficient enough to interfere in the orders of the Labour Commissioner. Hence, this Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.10.2022

Index: Yes/No
Internet: Yes/No
Ls



CMA(MD) No.1335 of 2012

WEB COPY

To

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

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CMA(MD) No.1335 of 2012

R.THARANI,J.

Ls

Pre-delivery Judgment made in

C.M.A(MD)No.1335 of 2012

10.10.2022