



C.M.A(MD)No.1395 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.11.2022

Pronounced on : 21.12.2022

CORAM

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

C.M.A(MD)No.1395 of 2012

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...Appellant/ Petitioner

Vs

1.M.Rama

2.The Branch Manager,
The United India Insurance Company Ltd.,
Branch Office, Sita Laxmi Complex,
Thirunagar,
Madurai - 625 006.

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, to set aside the order passed in W.C.No.157 of 2009 dated 18.07.2012 on the file of the Deputy Commissioner of labour, Madurai.

For Appellant : Mr.S.M.Mohan Gandhi

For Respondent : Mr.K.Neelamegam for R.1

Mr.B.Rajesh Saravanan for R.2



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order W.C.No.157 of 2009 dated 18.07.2012 on the file of the Deputy Commissioner of labour, Madurai. The appellant herein is the claimant, respondents are the respondents in the claim petition.

2.Brief substance of the claim petition is as follows:

On 29.10.2008, when the petitioner was cleaning the lorry after unloading the stones in the quarry, the driver of the vehicle moved the vehicle all of a sudden, the petitioner sustained injury. Three fingers in the right hand were crushed and they were later amputated. The petitioner sustained 100% disability. The age of the petitioner at the time of accident was 36 years. He was an employee of the first respondent and was earning Rs.4000/- per month. The accident has happened in the course of the employment. The vehicle was insured with the second respondent. The petitioner claimed a sum of Rs.6 Lakhs as compensation.

3.Brief substance of the counter filed by the first respondent is as follows:



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The petitioner has to prove the injuries. The vehicle was insured with the second respondent. The second respondent is liable to pay compensation and not the first respondent.

4.Brief substance of the counter filed by the second respondent is as follows:

The petitioner has suppressed the manner of accident. There is no employer and employee relationship between the petitioner and the first respondent. The petitioner has given a statement before the Doctor wherein he has admitted that the accident is an industrial accident. The nature of injuries, disability, age, income are to be proved. The criminal case was closed as mistake of fact. The accident has happened when the petitioner was working in Ravi Blue Metal quarry. The second respondent is not liable to pay compensation.

5.Two witnesses were examined and five documents were marked on the side of the petitioner. One witness was examined and one document was marked on the side of the respondent. The labour Commissioner, dismissed the claim petition.



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6. Against the same, the appellant preferred this appeal on the following grounds:

The accident has happened during the course of employment and there was an employer and employee relationship between claimant and the first respondent. There was no details regarding the person who prepared the enquiry report. The enquiry report was not duly proved by the second respondent. The accident has happened only during the operation of quarry and the findings of the Deputy Commissioner of Labour is wrong. The reason assigned by the Deputy Commissioner of Labour in dismissing the claim petition is not sustainable and the same is liable to be set aside.

7. This Civil Miscellaneous appeal is admitted on the following substantial questions of law:

i) Whether the learned Deputy Commissioner of labour is justified in relying upon the enquiry report of the Insurance company for dismissing the claim petition as no details about the persons from whom the information were gathered?

ii) Whether the Appellant is not entitled for the compensation under the Workmen Compensation Act as held by the Deputy Commissioner of labour, Madurai is legally sustainable especially there were no materials available to disprove the appellant's contention?



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8.Question No.1:

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On the side of the appellant it is stated that the Tribunal failed to consider that the enquiry report was not properly proved by the second respondent. The person who gave information for the enquiry officer was not examined. The appellant was the lorry cleaner. When he was removing the stone under the tyre of the lorry, the lorry driver negligently moved the vehicle and the fingers of the appellant were crushed. Only on the basis of an endorsement in the medical report, the Tribunal has come to a conclusion that the accident is an industrial accident. On the basis of the endorsement, the Tribunal has come to a conclusion that the accident was not in the course of employment. The Manager of the company has admitted that the claimant is working in the company for the past 5 years and that the accident has taken place while the petitioner was removing the stones. The accident has taken place within the premises of the company. But the accident involved the vehicle.

9.On the side of the respondent it is stated that the First Information Report was already closed as mistake of fact. No document was produced on the side of the appellant to prove that there was an accident. Only an



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industrial accident was converted into a motor vehicle accident for the purpose of claiming insurance. There is no document to prove the involvement of the vehicle or implicating the insurance company. The FIR was marked as Ex.P1.

10.On the side of the respondent it is stated that the FIR was closed as mistake of fact. But no such document was produced on the side of the respondent. The respondent failed to examine any witness to prove that the FIR was closed as mistake of fact. The evidence of the private investigation officer is insufficient to prove that the FIR was closed as mistake of fact. The concerned police investigation officer was not examined. The police officials were not examined to verify whether an accident was happened due to an explosion in the quarry.

11.Without any evidence regarding the closure of FIR as mistake of fact, only based on the 161 statement recorded by the police, the private investigation officer has filed a report. Without an examination of the private investigation officer who prepared the report, the report was considered by the Labour Commissioner.



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12.It is seen that there is an endorsement in the medical report that there was an industrial accident. Whether that endorsement was made on the basis of the statement given by the injured or by some other person is not clear. It is true that the accident has happened within the factory premises. But the involvement of vehicle cannot be rebutted by the endorsement of the Doctor.

13. The relationship of employer and employee was not denied by the first respondent. The contention of the appellant is that the appellant was working as a cleaner and that the accident has happened during the course of employment. The fact was also not denied on the side of the first respondent. Admittedly the accident has occurred within the factory premises. The place of accident is not the only criteria to decide the issue. The claimant has lost three of his fingers. P.W.2 has deposed to that effect and the discharge summary was marked as Ex.P2.

14.A perusal of the records reveals that there was two statements recorded under Section 161 of Cr.P.C., by the police and were marked along with the private investigation report. In both the statements it is stated that the appellant was working as a cleaner in the lorry. The police officials who



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closed the case as mistake of fact was not examined. Even in the 161 statement of one Elamadan and Mariappan, it is stated that the appellant was working as a cleaner in the lorry. Even in the private investigation report, in column No.4, in the details of injured, it was mentioned that the occupation of the injured was a cleaner. Hence, it is decided that the employer and employee relationship was proved.

15. But in both the 161 statements mentioned above, it was stated that when the petitioner was using explosive for blasting the stones, an accident has happened. There is no possibility for a cleaner to use Explosives in a quarry. The 161 statement are insufficient to prove that the petitioner used explosives. The private investigator failed to file a copy of the statement whether the FIR was closed as mistake of fact. The police officials who closed the case as mistake of fact was not examined as a witness. Since the statement regarding closure of the FIR was not filed along with the private investigation report, the contention of the second respondent is not maintainable.



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16. The second respondent has not filed any record to show that there was an explosive accident in the company on the particular date. Only based on the statement mentioned in the accident register copy and in the wound certificate, the Labour Commissioner has come to a conclusion that the accident was an industrial accident. The endorsement made by the Doctor is insufficient to prove the accident as an industrial accident. The accident has happened within the premises of the industry. That does not mean that the accident is an industrial accident. Since, an industrial accident was not proved, the claim of the second respondent is not maintainable.

17. Admittedly, the appellant was working as a cleaner in the lorry, if at all there is a industrial accident, there is every possibility of the appellant to have sustained some other injury, especially burn injuries. Here, the appellant was having only crushed injuries and not burn injuries. Hence, it is decided that the appellant has sustained injuries in an accident that involved the vehicle.

18. The Doctor has certified that the petitioner sustained 50% disability. The disability certificate was marked as Ex.P6, X-ray was marked as Ex.P7. P.W.2 has deposed that the edge of the right hand thumb was not present.



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Three bones in the index finger and three bones in the middle fingers were missing. There was malunion of bones in the left thumb. On the basis of the evidence of P.W.1 and P.W.2 and on the basis of Ex.R6 and Ex.R7, it is decided that the petitioner sustained 50% permanent injury in the accident. Hence it is decided that the appellant is entitled to claim compensation under the Workmen Compensation Act.

19. There is no dispute regarding the insurance policy. The age of the petitioner at the time of accident as stated in the petition is 36 years. In the disability certificate, the age of the petitioner was mentioned as 48 years. In the wound certificate, it was mentioned as 45 years. On the basis of the disability certificate, the age of the petitioner is fixed as 48 years. It is decided that the petitioner is getting a salary of Rs.4000/- per month. Hence, the compensation is calculated as follows:

For the age of the petitioner, the factor applicable is 159.80. Hence, the compensation is fixed as follows: $4000 \times 60/100 \times 159.80 = \text{Rs.}3,83,520/-$.

20. In the above circumstances, this Civil Miscellaneous Appeal is partly allowed. No costs.



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(i) The quantum of compensation is fixed as Rs.3,83,520/- (Rupees Three Lakhs Eighty Three Thousand Five Hundred and Twenty only) which shall carry interest at the rate of 12% per annum.

(ii) The second respondent / insurance company is directed to deposit the entire compensation of Rs.3,83,520/- (if not already deposited) together with interest at the rate of 12% per annum from the date of accident till the date of deposit and proportionate costs to the credit of W.C.No.157 of 2009 on the file of the Deputy Commissioner of labour, Madurai, within a period of eight weeks from the date of receipt of a copy of this order and permitted to collect the same from the owner of the vehicle.

(iii) On such deposit being made by the appellant / insurance company, the first respondent herein/ claimant is permitted to withdraw the entire award amount of Rs.3,83,520/- (Rupees Three Lakhs Eighty Three Thousand Five Hundred and twenty only) with proportionate interest.

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Index: Yes / No
Internet : Yes / No

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R. THARANI, J

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To

- 1.The Deputy Commissioner of labour, Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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