



C.M.A. No. 1857 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1857 of 2021

V. Sivakumar

... Appellant / Applicant

Vs.

1. Dhanapal

2. Oriental Insurance Company Limited,
Thuraiyur Road,
Namakkal.

... Respondents / Opposite parties

Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, 1923 to set aside the award dated 09.11.2020 made in E.C. No. 45 of 2016, on the file of the Deputy Commissioner of Labour, Coonor.

For Appellant : Mr. Ma.P. Thangavel

For R1 : No Appearance

For R2 : No Appearance



C.M.A. No. 1857 of 2021

JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal has been filed by the applicant against the dismissal of his claim petition as per award dated 09.11.2020 made in E.C. No. 45 of 2016, on the file of the Deputy Commissioner of Labour, Coonor.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case of the claimant is that, he was engaged as a driver by the first respondent herein to drive the TATA ACE bearing Registration No.TN-47-R-5461. On 07.06.2015, the said TATA ACE was taken to an auto service centre to repair its diesel pump leakage and while repair work was being carried out, the claimant accidentally contacted his left hand with the rotating belt of the vehicle, thereby suffered grievous injuries. Due to injuries sustained, the claimant has come forward with the claim petition seeking compensation from the respondents by invoking Employee's Compensation Act, 1923.



C.M.A. No. 1857 of 2021

WEB COPY

4. The first respondent, who is the employer of the claimant has not contested the claim and remained ex-parte. The second respondent – insurance company has filed a counter and submitted that the claimant being a driver of the vehicle is not supposed to attend the repair work, more particularly when the vehicle was taken to the Auto Service Centre to carry out its repair work. The second respondent – insurance company also submitted that the claimant has voluntarily invited the occurrence, so, he is not entitled to get compensation, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.10 were marked. On the side of the respondent, no witnesses were examined and no exhibits were marked. The Tribunal based on the evidence recorded during cross examination of the claimant, has held that the claimant has not proved his employment with the first respondent and was working with the Sai Auto Garage, hence the Tribunal has held that the claimant was not a employee of the first respondent, hence dismissed the claim petition.



6. Aggrieved over the award of the Tribunal, the claimant has filed this appeal under section 30 of the Employee's Compensation Act, 1923 for claiming compensation.

7. The learned counsel appearing for the claimant has submitted that there is an ample evidence adduced by the claimant to show that he was employed by the first respondent to drive his TATA ACE goods vehicle and without considering the same, the Tribunal has relied on the slip answer given by the claimant and rejected other evidences, and denied the claim. Hence, he raised the substantial question of law specifically as "whether the approach of Deputy Commissioner Labour (DCL), Coonor is correct in dismissing the entire claim petition in limine, without analysing pleadings and evidence in proper and prays to set aside the award of the DCL, Coonor and grant compensation.

8. I have considered the submissions made and perused the materials available on record. The substantial question of law arises in this appeal is as follows:

1. *Whether the dismissal of claim petition filed invoking Employee's Compensation Act, 1923 by the Deputy*



WEB COPY

Commissioner of Labour is proper?

2. *Whether the claimant is entitled to get compensation under Employee's Compensation Act, 1923? if so, from whom?*

9. On perusal of the evidence of P.W.1, the claimant has categorically stated that he was an employee of the first respondent to drive the TATA ACE goods vehicle bearing Registration No.TN-47-R-5461. While he was cross examined, the question put to him that why he had attended the TATA ACE repair work in Sai Auto Garage, and he has stated that while he was carrying out the repair work of the TATA ACE in the Sai Auto Garage, he sustained injuries. This was interpreted by the Tribunal that, he sustained injuries while attending repair work at Auto garage and he is an employee of the Auto garage. While interpreting the evidence of an employee more particularly in the cases relating to claim petition under Workmen compensation, the Tribunal should consider entire material placed on record. The slip answer stated by him that, while he was attending repair work in Auto garage shall not mean that he has admitted his employment at Auto garage, whereas the claimant has only stated that he sustained injuries while attending repair work in the above Auto garage.



10. The claimant has marked his driving licence to support his evidence that he is eligible to drive the goods vehicle, more particularly, the TATA Ace vehicle of first respondent. He has also served legal notice to first respondent, demanding compensation. He marked his discharge summary – Ex.P.3, to show that he sustained injuries as claimed by him. All these exhibits have not been properly analysed by the Tribunal.

11. The case of the respondent is also that the claimant while attending the repair work, he himself has invited the accident and it is not the respondents case that he is not an employee under the first respondent. But, the Tribunal has failed to properly appreciate the complete evidence more particularly, defence taken by the second respondent, hence, this Court is of the view that the finding of the Tribunal based that the claimant was not an employee of the first respondent, is not proper and the claimant is eligible to get compensation under Employee's Compensation Act, for the injuries sustained by him during his course of employment under the first respondent.

12. With regard to quantum of compensation, the evidence of



P.W.2 – Dr. M. Sivakumar, who has deposed that the claimant has sustained following injuries: Crush injury left index at TPX Finger, degloving, crush injury middle finger up-to middle phalanx, raw area of ring terminal phalanx level with exposed nail head and bone. He has also assess the disability of the claimant as 22% based on the old medical records, discharge summary and x-ray of the claimant, stating that there is no movement at MTP joint of all the four fingers and loss of sensations over the ring and little finger, and there is 70% reduction of the hand function of the claimant. On perusal of the Ex.P.7- Discharge summary, Ex.P.9- X-ray and Ex.P.10- Disability Certificate, this Court is of the view that the claimant/ workman has sustained injuries. In the cross examination of P.W.2-Doctor, he has deposed that the disability of the claimant is assessed based on the references in the National Disability Guide and he has denied the suggestion made that as per the schedule, the disability of the claimant would come around 6%. Ex.P.6 – Driving Licence of the claimant shows that the claimant is aged about 42 years at the time of accident. Based on the above observations, considering the age, avocation and nature of injuries sustained by the claimant, this Court is of the view that assessing the disability of the claimant to the extent of 22% would be proper.



WEB COPY

13. It is also the admitted fact that, the claimant herein is driver by profession and the disability sustained by him, more particularly in the fingers of his hand would restrict him to some extent, from doing his earlier avocation. Therefore, considering the nature of injuries and disability sustained by the claimant, this Court is of the view that the disability would result in loss of his earning power to the extent of 20%.

14. The injured herein has sustained injuries during his course of employment under the first respondent, hence the claimant is entitled to claim compensation from the employer of the deceased i.e., first respondent as per the Workmen's Compensation Act and also the insurance policy covers the workmen of the owner of the vehicle. Before the Tribunal, the claimant has stated that he was earning Rs.12,000/- per month by working as driver under the first respondent, but to prove the same, the claimant has not adduced any oral or documentary evidence. Hence the monthly wages notified by the Central Government under Section 4(1B) shall be applicable, considering the avocation, age of the deceased and date of accident, the notional monthly income of the deceased is fixed as Rs.8,000/-.



C.M.A. No. 1857 of 2021

Accordingly, as per the structured formula illustrated in schedule IV of the Workmen's Compensation Act, the loss of earning power of the claimant is assessed as follows:

Age of the claimant at the time of accident	= 42 years
Age factor as per Schedule-IV of Workmen's Compensation Act for the age 42	= 178.49
Monthly notional income of the injured	= Rs.8,000/-
Compensation as per Schedule - IV of Workmen's Compensation Act (Rs. 8,000 x 60/100 x 178.49)	= Rs.8,56,752/-
Loss of earning capacity	= 20%
Total Compensation (20% of Rs.8,56,752/-)	= Rs.1,71,350/-

15. On perusal of medical bills marked as exhibits by the claimant, it shows that the claimant has incurred medical expenses of Rs.40,616/-. Considering the nature of injuries and treatment undergone by the claimant, this Court is inclined to grant Rs.40,616/- under the head medical expenses. Accordingly, the compensation awarded by this Court is as follows:

S.No.	Description	Amount awarded by this Court (Rs)
1.	Loss of earning capacity	1,71,350/-



S.No.	Description	Amount awarded by this Court (Rs)
2.	Medical expenses	40,616/-
	Total Compensation	2,11,966/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the learned Deputy Commissioner of Labour, Coonor is hereby set aside and this Court awards compensation for a sum of **Rs.2,11,966/- (Rupees Two Lakh Eleven Thousand Nine Hundred and Sixty Six only)** along with interest @ 12% per annum from the date of accident till the date of realization, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest within a period of six weeks from the date of receipt of a copy of this judgment to the credit of E.C. No.45 of 2016 on the file of the Deputy Commissioner of Labour, Coonor. On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs by production of proof and Savings Bank account details. The Labour Court shall disburse the amount now awarded by this Court by directly giving credit to the



C.M.A. No. 1857 of 2021

Savings Bank Accounts of the claimant. Since this Court has awarded the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the compensation awarded. There shall be no order as to costs in the present appeal.

11.12.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Deputy Commissioner of Labour,
Coonor.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



WEB COPY



C.M.A. No. 1857 of 2021

K. RAJASEKAR, J.

stn

C.M.A. No. 1857 of 2021

11.12.2023