



C.M.A.No.706 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.02.2023

Delivered on : 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.No.706 of 2016

&

C.M.P.No.5707 of 2016

The Manager
Royal Sundaram Alliance General Insurance
Company Ltd., Sundaram Towers
45& 46
Whites Road, Chennai-600 014

... Appellant

Vs.

1.Krishnamurthy

2.C.Sekar

... Respondents

PRAYER: Appeal filed under Section 30 on the Employees Compensation Act, 1923 to set aside the decree and judgment dated 09.12.2014, made in W.C.No.147 of 2011 on the file of the Court of Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II) Madras.



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For Appellant : Mr.K.Vinod
for
Mr.Elveera Ravindran

For Respondents : Mrs.P.Mariammal for R1
R2 Given up

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 09.12.2014 in W.C.No.147 of 2011 on the file of the Court of Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II), Chennai, U/s. 30 of the Employees Compensation Act, 1923

2. The case of the claimant, one, Mr.Krishnamurthy before the Deputy Commissioner of Labour was that he was employed as a driver under the 1st respondent owner of the lorry bearing Registration No.TN-20-AJ-1417, drawing a monthly salary of Rs.7500/-, apart from Rs.300/- paid on a day basis.



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3. It is the clear case of the claimant that on 23.07.2009 at 06.00 p.m while climbing into the lorry near the crusher unit at Thirumalai granite quarry in order to drive the vehicle to get a load of black metal, the claimant slipped and fell down into a ditch which was filled with granite stone and sustained a fracture on his left thigh besides loss of fingers in the left hand. Claimant stated that the injuries were suffered “ in the course of employment” under the 1st respondent, the owner of the lorry and that the claimant was rushed to Puthur for treatment and subsequently since there was no recovery, he was shifted to a private hospital and later to Government Stanley Medical College and Hospital, where he underwent a surgery on 19.08.2009. It is his further case that besides the duration of stay in the hospital from 31.07.2009 to 31.08.2009, he was again admitted to Government Stanley Medical College and Hospital on 29.12.2009 and was thereafter discharged on 01.01.2010 after being treated for knee stiffness. It is the further case of the claimant that because of the loss of fingers and fracture of left thigh, he was not able to even stand, walk, squat or hold articles in the hand. In short, he claimed that the disability deprived him of employment as



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a driver. It is his case that FIR was registered before the S6- Shankar Nagar Police Station in Crime No.549 of 2009. The claim was made against the respondents viz., the 1st respondent, the owner of the lorry and the 2nd respondent, insurer with whom admittedly the lorry was insured during the relevant period of time viz., on 23.07.2009. The claimant ultimately sought for an award of Rs.10,00,000/- for the injuries sustained by him in the accident.

4. The owner of the vehicle/employer of the claimant chose to remain ex-parte. Even before this Court, the 2nd respondent has not chosen to appear. However, the appellant/2nd respondent insurance company denied all the claims made in Workmen's compensation case in toto and called upon the claimant to prove his employment under the 2nd respondent as on the date of accident and also the injuries sustained by him during the course of such employment. Curiously, the insurance company took a plea that there was no employer-employee relationship between the claimant and owner of the lorry and that the claimant was colluding with the owner of the lorry and hence



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sought for the dismissal of the claim.

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5. Before the Court of Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II) in W.C.No.147 of 2011, the claimant examined himself as P.W.1 and one Doctor, Sai Chandran was examined as P.W.2 and Exs.P.1 to P.9 were marked. On the side of the respondents, one Mr.Vinothkumar was marked as R.W.1 and no documents were filed on the side of the respondents.

6. The Lower Court on consideration of the oral and documentary evidence placed before it, passed an award for Rs.1,93,594/- and fastened liability on the appellant/insurance company.

7. Aggrieved by the said judgment and decree, the insurer viz., the appellant has filed the present Civil Miscellaneous Appeal, mainly contending that the liability cannot be fastened on the insurer for the simple reason that there was an inordinate delay in lodging the FIR which leads to



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even suspecting the very accident on 23.07.2009 and that the nature of injuries to the claimant could not have been caused due to the accident alleged to have occurred and in the manner set out by the claimant. The appellant also contended that the accident did not arise in the course of employment and challenged the findings of the Tribunal fastening liability on the appellant.

8. Heard the learned counsel for the appellant/insurance company and the learned counsel for the 1st respondent/claimant.

9. The learned counsel for the appellant vehemently contended that the delay in filing the FIR was fatal to the case of the claimant/1st respondent and infact even argued that the appellant was not on the quantum awarded as compensation but the question was only as to whether the appellant could be made liable to pay compensation in the first place. The counsel for the appellant also filed an additional typed set containing the FIR and the two discharge summaries issued by the Government Stanley Medical College and



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Hospital. Relying upon the said documents, the learned counsel for the appellant argued that there is no nexus between the alleged accident and even the discharge summaries did not mention the date of accident. In this context he further contended that the delay in filing the FIR was crucial and fatal to the case of the claimant. Concluding his submissions, the learned counsel for the appellant stated that the very accident alleged to have taken place on 23.07.2009 was itself debatable and the injuries could have been caused on some other day also at some other place and therefore, the insurer cannot be held liable to pay compensation.

10. On the other hand, the learned counsel for the 1st respondent/claimant supported the findings of the Tribunal and contended that only because of the nature of injuries sustained, the claimant could not lodge the FIR in time and that such delay in lodging the FIR cannot be put against the claimant and disentitle him from claiming compensation from the insurer and prayed for confirming the findings of the Court below.



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11. This Court has paid anxious considerations to the rival contentions placed by the counsel on either side.

12. The Court below has specifically found that the owner of the lorry i.e., the employer of the claimant/1st respondent having chosen to stay away from the proceedings led to the only conclusion that the claims made by the 1st respondent herein have to be accepted as they were not challenged by the competent person viz., the owner of the vehicle. The Court below has also found that the appellant ought to have examined the owner of the vehicle to disprove the claims with regard to the employment of the 1st respondent with the 2nd respondent, the nature of employment, salary and also other germane facts with regard to the accident that occurred on 23.07.2009. In this context, the learned counsel for the appellant argued that such a finding is perverse because the owner of the vehicle/2nd respondent herein has remained ex-parte and therefore the insurance company cannot be required to compel the attendance of such person who has willfully chosen to abstain from participating the proceedings.



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13. With regard to the delay in lodging the FIR, it is seen that the accident occurred on 23.07.2009 and the FIR came to lodged by the claimant/1st respondent on 02.08.2009 before the jurisdiction Police Station. On perusal of the FIR, it clearly indicates that on the date of the FIR being lodged, admittedly the claimant was in Government Stanley Medical College and Hospital as can be seen from the discharge summary produced by the appellant's counsel. The nature of injuries sustained by the claimant/1st respondent are not seriously disputed by the appellant. It is only the delay in lodging the FIR which seems to be concerning the appellant. A reading of the FIR shows that the claimant was taken to Puthur situated in Andhra Pradesh for treatment and as the treatment given to him there was not yielding any improvement, he was admitted in the Government Stanley Medical College and Hospital on 31.07.2009 and within a couple of days after being admitted to Government Stanley Medical College and Hospital at Chennai, the FIR has been lodged.



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14. This Court relies upon the ratio laid down by the Hon'ble Supreme Court in the case of *Ravi vs. Badrinarayan and Ors*, reported in (2011) 4 SCC 693. The case before the Hon'ble Supreme Court was arising out of compensation claim under the Motor's Vehicle Act. The delay in lodging FIR was put against the claimant and argued that delay was fatal to the very claim itself. Answering the said question, the Hon'ble Supreme Court held that mere delay in lodging the FIR cannot be a ground to doubt the case of the claimant. The Hon'ble Supreme Court further held that even though lodging of FIR is vital in deciding compensation cases, delay in lodging the same should not be treated as fatal for such proceedings, if the claimant has been able to demonstrate satisfactory and cogent reasons for the delay.

15. In the case on hand, a mere delay of 9 days has occasioned in lodging the FIR. Considering the nature of injuries and the various treatments that the claimant underwent firstly at Puthur, Andhra Pradesh and subsequently at Government Stanley Medical College and Hospital, Chennai, it can be reasonably expected that it was more important for the claimant to



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take care of his health first and he cannot be expected to immediately rush to the Police Station after the accident and lodge a complaint. Even otherwise a delay of 9 days cannot be said to be inordinate. This Court finds no reason to suspect the bonafides of the claimant. Admittedly, he has suffered injuries for which he has been treated and in support of such treatment, medical records have also been produced. Therefore, applying the ratio laid down by the Hon'ble Supreme Court in the case of *Ravi vs. Badrinarayan and Ors*, reported in *(2011) 4 SCC 693*, this Court holds that the delay of 9 days in lodging the FIR is not fatal to the case of the claimant and does not in anyway take away or dilute the bonafides on the part of the claimant in approaching the Court seeking compensation.

16. Therefore, this Court holds that the insurer/appellant is liable to compensate the claimant for the injuries suffered. In so far as the non-examination of the owner of the vehicle as already stated herein above, peculiarly the insurance company has stated that there is no employer-employee relationship between the claimant and the owner of the vehicle.



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The 2nd respondent/owner of the lorry was the best person to come before the Court and speak about the employment of the claimant/1st respondent and other related details and he has admittedly chosen to remain ex-parte. In such circumstances, the Court below was right in accepting the case of the claimant/1st respondent in so far as his employment with the 2nd respondent owner of the vehicle and the accident occurring in the “course of employment”. If at all it was the specific and definite stand of the insurance company that the claimant was not an employee under the 2nd respondent/owner of the lorry, then the insurance company should have atleast summoned the owner of the lorry even though he had remained ex-parte to prove the specific stand that there was no employer-employee relationship between the respondents. This Court does not find any infirmity in the findings of the Tribunal. The claimant has not chosen to seek any enhancement though only a sum of Rs.1,93,594/- has been awarded as against the claim of Rs.10,00,000/-.



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17. This Court finds no merit in the appeal filed by the insurance company and consequently the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 09.12.2014, made in W.C.No.147 of 2011 on the file of the Court of Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II) Madras is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

02.03.2023.

Internet:Yes
Index:Yes/No
Speaking order
Neutral Citation:Yes/No
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To

1. The Judge
Commissioner for Workmen's Compensation-II
(Deputy Commissioner of Labour-II) Madras.

2.The Section Officer
V.R.Section
High Court, Madras

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P.B.BALAJI, J.,
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Pre-delivery judgment in
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