



C.M.A.No.3122 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.3122 of 2017

and

C.M.P.No.19204 of 2017

M/s. Royal Sundaram Alliance Insurance Co., Ltd.,
No.2, Subramaniam Building,
Club House Road, Mount Road,
Chennai-600 002.

... Appellant /2nd respondent

Vs.

1. Manavalan

... Respondent/Applicant

2. L.G.Srinivasan

... Respondent/1st respondent

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the Order dated 10.01.2017 made in W.C.No.25 of 2013 on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour-II, Chennai.

For Appellant : Mrs.Harini
For M/s.M.B.Gopalan Associates

For R1 : Ms.M.Malar

For R2 : Dispensed with



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award of the Labour Commissioner granting compensation to the workmen for the accident held on 03.10.2012 to the employee under the employer of the first respondent.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The Labour Commissioner on enquiry has awarded a sum of Rs.4,24,552/- as compensation to the workmen and directed the second respondent to pay the same on behalf of the first respondent.

4. It is the case of workman that he was a lorry driver under the first respondent Company, while he was loading acids, found leakage of acids from the lorry tanker and while he attempted to stop the leakage, he suffered on his eyes which resulted in loss of eyesight to the extent of 60% disability. For the accident, he has also lodged a police complaint and the same has been registered in Crime No.5 of 2012 on the file of the Setharapattu Police station, Puducherry.



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5. The first respondent-employer was remained ex-parte and the second respondent-Insurance Company participated in the enquiry and contested that the injury has not been occurred as stated to the above workman and the loss of income for the injuries sustained by the workman have been exaggerated. He admitted that the said lorry has been insured with the Insurance Company.

6. During the enquiry, on the side of the petitioner, P.W.1 and P.W.2 were examined and Exs.P1 to P10 were marked. On the side of the second respondent-Insurance Company, R.W.1 was examined and Exs.R1 to R3 were marked.

7. Aggrieved over the award passed by the Deputy Commissioner of Labour -II, the present appeal has been filed by the Insurance Company before this Court.

8. The second respondent-Insurance Company has contended that the workmen was assessed disability on his eyes, the injury sustained by the respondent is disability of eyesight and which is assessed to be 60% of disability and the Deputy Commissioner of Labour-II has accepted the same



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as 55% as considering the loss of earning capacity and accordingly awarded compensation. But the Insurance Company has contended that the Deputy Commissioner of Labour-II has failed to appreciate the fact that the workman has subsequently obtained driving licence within the short span of time, right after the assessment of disability. Further the assessment of liability is also on the higher side, hence, prays to set aside the award.

9. Countenancing the averments, the learned counsel for the workmen contended that as per Section 30 of the Employees Compensation Act, 1923, the only ground sought to be raised in the appeal is to substantiate the question of law if any involved, otherwise no appeal is maintainable with regard to question of fact. But in this case, the Insurance Company questioning the fact relating to loss of eyesight, disability assessed which is the question of fact and the same could not be agitated by way of an appeal. It is also submitted that the renewal of licence was not dis-entitled the injured workmen/claimant. In support of her contention, she has relied on the Judgment of the Hon'ble Apex Court in ***North-East Karnataka Road Transport Corporation vs. Sujatha*** reported in ***2018 (2) TN MAC 577 (SC) : 2019 (11) SCC 514*** in paragraph No.9 which reads as follows:



“9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the Employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of Employee and Employer, what was the age and monthly salary of the Employee, how many are the dependents of the deceased Employee, the extent of disability caused to the Employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the Employer to cover the incident, etc., are some of the material issues which arise for the just decision of the Commissioner in a Claim Petition when an Employee suffers any bodily injury or dies during the course of his employment and he/his Lrs sue/s his employer to claim compensation under the Act.”

10. The learned counsel for the workmen has also relied on the Judgment of the Madras High Court in ***The Divisional Manager, United India Insurance Co., Ltd., vs. Thomas and Vincent Amalraj*** in ***C.M.A.(MD).No.183 of 2015, dated 20.02.2015*** in paragraph Nos.13 & 14 which reads as follows:

“13. In case, if the 1st respondent was not able to get the licence renewed, then, it should be taken as permanent total disablement as defined under Section 2(1) of the Act and Section 2(1) is also extracted hereunder:-

(1) “Total disablement” means such disablement, whether of a temporary or permanent nature, as



incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement;

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred percent, or more;

14. In that case, the appellant insurance company shall pay compensation for 100% disability.....

“..... Therefore, the renewal of license would not affect the right of the workman to get compensation. By putting it differently, I would like to make it clear that if a workman who suffered injuries that resulted in certain percentage of permanent partial disablement and thereafter, he was given promotion and earned something more than the amount which he earned at the time of accident, the employer could not deny payment of compensation under the Workmen's Compensation Act. Such a plea of the employer is contrary to the very scheme of the Workmen's Compensation Act. The Workmen's Compensation Act provides compensation for the injuries suffered during and in the course of employment, if the injuries resulted in permanent partial or total disablement. The Workmen's Compensation Act is beneficial legislation. If this plea of the employer is accepted, it would defeat the very purpose of the enactment.”

11. Admittedly, the assessment of liability is involved, recording of evidence and appreciation of the same, which is to be considered as only question of fact and does not involved in question of



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law. Similarly, the Tribunal has also considered the evidence of R.W.1-Official of RTO, who was deposed in the cross examination, that without getting any assessment regarding eyesight, the driving license has been renewed for the employee herein. Hence, I am of the view that renewal of license by the employee is not impediment to claim compensation, if he is established the fact that he had suffered injury which resulted in visual impairment of disability.

12. In the Hon'ble Apex Court in ***North-East Karnataka Road Transport Corporation vs. Sujatha case***, cited supra, has held that considering the maintainability of the appeals filed under Section 30 of the Employees Compensation Act, 1923 and the scope and power of the Appellate Court has held in Paragraph No.12 which reads as follows:

“12. In other words, the Appeal provided under Section 30 of the Act to the High Court against the Order of the Commissioner is not like a Regular First Appeal akin to Section 96 of the Code of Civil Procedure, 1908, which can be heard both on facts and law. The Appellate jurisdiction of the High Court to decide the Appeal is confined only to examine the Substantial Questions of Law arising in the case.”



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13. Considering the Judgment of the Hon'ble Apex Court that, questioning the involvement in this appeal relating to factual aspect and this Court is of the view that the appeal is not maintainable. Accordingly the appeal filed by the Insurance Company is liable to be dismissed.

13. In the result, the Civil Miscellaneous Appeal is dismissed. The Asward passed by the Deputy Commissioner of Labour-II, dated 10.01.2017 in W.C.No.25 of 2013 on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour-II, Chennai is confirmed. No order as to costs. Consequently, the connected miscellaneous petition stands closed.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To



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1.The Commissioner for Workmen Compensation,
Deputy Commissioner of Labour-II,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

K.RAJASEKAR,J..



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