



C.M.A.No.2129 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 01.12.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.2129 of 2022
and C.M.P.No.16521 of 2022

M/s.United India Insurance Company Limited,
No.2, Dr.Sankaran Road,
Namakkal.

... Appellant

Vs

1.Durbendra
2.P.Jayasankar

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Employees' Compensation Act, 1923 against the award made in E.C.No.861 of 2015, dated 19.02.2018 on the file of the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Coonoor.



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For Appellant : Ms.Harini
for M/s.M.B.Gopalan Associates

For Respondents : Mr.Ma.P.Thangavel for R1
R2 - served - No Appearance

JUDGEMENT

The insurance company of a bore well rig unit belonging to the second respondent herein has preferred this appeal, challenging an award passed under the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Act' in short).

2. On 11.05.2012, the first respondent / claimant was stated to be working as a helper in the bore rig at Ramkara, Chhindwara District in Madhya Pradesh. According to him, in the course of his employment, he suffered an injury when he fell down while he was engaged in dropping the pipe.



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3. In the said accident, the first respondent suffered a fracture to his left femur.

The next information we have from the records is that he came to his native on 18.05.2012, and Ex.P.1, a wound certificate, issued by the M/s.Londen Ortho Speciality Hospital, Salem, and he is stated to have fallen in the circumstances stated above. The surgery was performed on him on 19.05.2012, and he was discharged on 28.05.2012 as borne out by Ex.P2, discharge summary. Thereafter, he laid a claim petition before the Tribunal with a bit of delay and for condoning the delay, he had laid I.A.No.284 of 2014. This was ordered, and the claim petition was taken on record by the Tribunal in W.C.No.861 of 2015.

4. The Tribunal had passed an award of Rs.3,01,182/-, of which, Rs.66,049/- constitutes medical expenses. The claim was supported by the owner of the rig, whereas the insurance company doubted the very accident. However, the owner of the rig did not participate in the enquiry. Challenging this award, the insurance company is now before this Court.



5.The learned counsel for the appellant made the following submissions:

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(a) the accident alleged to have taken place somewhere in Madhya Pradesh on 11.05.2012, but there is hardly any documents to indicate that he was a helper and that the accident had taken place in the course of employment at Madhya Pradesh. In other words, the very accident itself is suspicious;

(b) the only documents produced are Ex.P1, wound certificate and Ex.P2, discharge summary. Both issued by the same hospital at Salem. While the claimant had said to have suffered injury on 11.05.2012, Ex.P1 bears the date 11.05.2012. This renders the very accident suspicious.

6.Mr.Ma.P.Thangavel, the learned counsel for the first respondent submitted along the lines of the case presented by the claimant and also adopted the line of reasoning of the Commissioner. Here is a case where a helper in a rig is alleged to have suffered injuries on 11.05.2012. He is a migrant worker from Sivani



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District, (which as per Google is in Madhya Pradesh). The counter of the second respondent, the owner of the rig unit supports the accident. If the accident is fake, it does not stand to reason that some rig operator in Salem should support the case of somebody like the petitioner, if he was not his employee. Secondly, the accident had taken place on 11.05.2012, and according to the claimant, he was taken to the Government hospital at Chhindwara, where he was working at the relevant time. To expect a worker in distress and trauma to preserve all the material documents in the contemplation of preferring a claim petition later *per se* is unrealistic, non-pragmatic, and even inhuman. One must look into the circumstances of how an ordinary worker will behave in circumstances such as this. It is apparent that he had reached Salem, whereupon he was taken to a local hospital. Ex.P2 cannot be disputed since it is a discharge summary. If Ex.P2 cannot be disputed, then Ex.P1, wound certificate on the date of the admission also cannot be disputed.

7.It is in this circumstance, the claimant has preferred the claim petition beyond two years period stipulated for preferring under Section 10 of the Act. If only the claimant has to manufacture the document, then it has to be established that



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Ex.P2 is a fabricated document. If Ex.P2 follows Ex.P1, both have to be accepted. Therefore, merely because the claimant could not produce any document of his initial treatment taken in the local hospital at Chhindwara or mere a delay in preferring the claim petition, cannot be a ground for disbelieving his very case. After all, life of law is not pure logic but experience and the Court, in appreciating evidence, need to undertake the exercise keeping in mind the ordinary course of human conduct. This human conduct varies with persons and circumstances.

8.To conclude, this Court does not intend to interfere with the finding of the Tribunal that the claimant, indeed was the employee of the owner of the rig unit at the relevant time, and that he had sustained injury in the course of his employment.

9.The learned counsel for the appellant would now submit that since there is a delay beyond two years, the claimant may be denied interest on the delay period. The accident had taken place on 11.05.2012, and the limitation will end on 11.05.2014. Admittedly, he had preferred I.A.No.284 of 2014 for



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condonation of delay. Therefore, the delay could not be more than some 6 ½ months. Today, what is the duration of delay could not be ascertained either from the records of the case nor by the learned counsel for the appellant. Since the delay is too shorter period, this Court does not consider it necessary to deny the claimant's interest for the period.

10.In conclusion, this Court does not find merit in the appeal. The award of the Tribunal is hereby confirmed. The claimant is permitted to withdraw the award amount, along with proportionate interest, less, the amount, if any already withdrawn.

11.Accordingly, this Civil Miscellaneous Appeal stands dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
Anu



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N.SESHASAYEE, J.

Anu

To

1. The Commissioner for Workmen's Compensation,
Deputy Commissioner of Labour, Coonoor
2. The Section Officer, V.R. Section, High Court, Madras.

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