



C.M.A.(MD)No.1229 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.07.2023

Pronounced on : 26.07.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.1229 of 2011

Arul Devadoss

... Appellant/
Petitioner

Vs.

TamilNadu State Express Transport
Corporation Limited,
through its Managing Director,
Chennai – 600 002.

... Respondent/
Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1923, to set aside the order dated 05.08.2010 (served to the appellant by post on 22.11.2010) passed in W.C.No.539 of 2003 on the file of the Workmen Compensation Commissioner, Deputy Commissioner of Labour, Thiruchirappalli, and allow the present civil miscellaneous appeal.

For Appellant : Mr.K.Gokul

For Respondent : Mr.P.Prabhakaran



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JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in W.C.No.539 of 2003 dated 05.08.2010 on the file of the Workmen Compensation Commissioner/Deputy Commissioner of Labour, Tiruchirappalli.

2. The case of the appellant is that he joined in the respondent Transport Corporation as a driver on 07.09.1988, that he was allotted to work in Nagapattinam depot and from the date of joining he was taking trips from Nagapattinam to Bangalore, that he discharged his duties efficiently without involving himself in any accident, that he used to drive the vehicles covering distance of 600kms daily, that due to such nature of work and frequent usage of his right leg, he was diagnosed to have arthritis in his right knee, that since he could not drive the heavy vehicles, he was constrained to apply for medical leave, that he was directed to appear before the medical board and accordingly, appeared before the medical board on 05.08.1999, that the medical board has sent a report that the appellant was not fit enough to drive heavy vehicles, but he was fit



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enough to do any other alternative work, that the management, without giving him some alternative employment, by proceedings dated 10.10.1999, discharged the appellant from duty, that the respondent has not paid any compensation nor gave any treatment for the disability suffered, that since the appellant has suffered 100% disability, the respondent is liable to pay compensation and that therefore, the appellant was constrained to file the claim petition before the Deputy Commissioner of Labour seeking compensation of Rs.10 lakhs with interest and costs.

3. The defence of the respondent is that the appellant was made permanent only on 01.01.1990, that since he had absented himself from duty without any intimation from 1999 onwards, the appellant was terminated from service after complying with all the mandatory requirements, that since the appellant has not shown that the disability suffered by him was due to his avocation, the claim petition itself is not maintainable and that since there was no relationship of employer-employee between the appellant and the respondent, the claim petition is liable to be dismissed.



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4. During enquiry, the appellant has examined himself as P.W.1 and the medical officer Thiru.Ramachandran as P.W.2 and exhibited 9 documents as Ex.P.1 to Ex.P.9.

5. The Deputy Commissioner of Labour, upon considering the evidence and on hearing the submissions made by both the sides, has passed the impugned order dated 05.08.2010 dismissing the claim petition. Aggrieved by the dismissal order, the petitioner has preferred the present appeal.

6. At the time of admission, the following substantial questions of law were framed:

(1) Whether the learned Commissioner is right in dismissing the application seeking compensation for the discharge of the appellant from the employment as a driver especially when not providing alternative employment as per provisions to Section 47 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995?

(2) Whether the learned Commissioner is correct in law in holding that the injuries and sufferings undergone by the appellant is not covered under schedule III of the Workmen Compensation Act, 1923



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and the ultimate dismissal of the claim petition and holding that the appellant is not entitled for any compensation?

7. It is not in dispute that the appellant was working as a driver in Nagapattinam depot of the respondent, that while he was working, he was affected by arthritis and that since he was not in a position to drive the vehicles, he was directed to appear before the medical board. It is also not in dispute that the medical board, after examining the appellant, has sent a report, giving their opinion that the appellant was not fit enough to drive the heavy vehicles.

8. It is the specific case of the respondent that after issuing show cause notice and after complying with the necessary requirements, the appellant was discharged from service.

9. According to the appellant, due to the nature of driver work and frequent usage of his right leg, he was affected by arthritis in his right knee. As rightly contended by the learned counsel appearing for the respondent, the appellant has not produced any iota of materials to link the driver work with the arthritis disease. Moreover, the Workmen



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Compensation Commissioner, by holding that the injuries and the sufferings undergone by the appellant are not covered under the Schedule III of the Workmen Compensation Act, dismissed the claim petition.

10. When the matter was taken up for hearing on 20.07.2023, the learned counsel appearing for the respondent would submit that the appellant subsequent to the filing of the present appeal has filed a writ petition in W.P.(MD)No.28012 of 2015 for writ of certiorarified mandamus to call for the entire records dated 10.10.1999 on the file of the State Express Transport Corporation, Nagapattinam depot, Nagapattinam District and quash the same and consequently, direct the respondents therein to count the period from 10.10.1999 till the date of retirement of the appellant herein in April 2015 for the purpose of continuity of service and all other attendant benefits including enhanced pension and he has produced the copy of the writ petition and the affidavit filed in support of the same.

11. As rightly pointed out by the learned counsel appearing for the respondent, the appellant herein/petitioner therein in the writ petition has



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specifically stated that in view of provisions of Section 47 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995, the appellant herein/petitioner therein is entitled for alternative employment and he ought not to have approached the Deputy Commissioner of Labour with the petition under Workmen Compensation Act for compensation. The appellant herein/petitioner therein has further stated that the above proceedings had already consumed 7 years, that he had approached the wrong forum to ventilate his grievance and that therefore, he was forced to file the writ petition claiming the reliefs above referred. As rightly contended by the learned counsel appearing for the respondent, the appellant himself has taken a stand that he has wrongly approached the Workmen Compensation Commissioner and he ought not to have filed the claim petition before him.

12. It is pertinent to note that the appellant's writ petition in W.P. (MD)No.28012 of 2015 claiming continuity of service and other attendant benefits is pending on the file of this Court.



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13. Considering the above, the impugned order dismissing the claim petition cannot be found fault with. Hence, this Court concludes that the Civil Miscellaneous Appeal is absolutely devoid of merits and the same is liable to be dismissed.

14. In the result, the Civil Miscellaneous Appeal is dismissed.

26.07.2023

NCC : Yes/No
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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.1229 of 2011

Dated : 26.07.2023