



C.M.A(MD)No.1422 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 14.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)No.1422 of 2013

and

M.P(MD)No.2 of 2013

The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Dindigul Godown Branch No.III,
Palani Road,
Near Murugapavanan,
Dindigul Town,
Dindigul.

... Appellant/Respondent

Vs.

K.Murugan

... Respondent/Petitioner

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act VIII of 1923, against the award, dated 30.03.2012 made in W.C.No.23 of 2010 on the file of the Commissioner Workmen's Compensation (DCL), Dindigul.

For Appellant : Mr.L.Siva
for Mr.G.Mohankumar

For Respondent : Mr.P.Thirunavukarasan



C.M.A(MD)No.1422 of 2013

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed by the Commissioner of Workmen's Compensation (DCL), Dindigul, wherein the respondent herein has claimed compensation as against the appellant for the injury sustained by him during the course of employment under the employment of appellant. The Tribunal has awarded a sum of Rs.1,68,518/- towards compensation. As against the order passed by the Tribunal, the present Civil Miscellaneous Appeal has been preferred.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

3. The brief facts of the petition averments are as follows:

The petitioner was working as a load man under the respondent for the past 12 years as load man and thereby, he earning a sum of Rs.300/- per day. While so, on 03.10.2009, when he was in duty, the cashier directed the petitioner to bring change for Rs.1000/-, when he attempted to cross the road, the vehicle bearing Registration No.TN 57 L 1495 came in



C.M.A(MD)No.1422 of 2013

a rash and negligent manner and dashed against the petitioner. Due to which, he sustained injury on his right leg and got fractured and he also sustained head injury. Due to the accident, he sustained permanent disability and he was unable to do his work and thereby, he filed the petition for claiming compensation.

4. The brief averments of the counter filed by the respondent are as follows:

The petition is not maintainable and the same is liable to be dismissed and the petitioner is put to stick proof of the averments made in the petition except those which are specifically admitted him. The averments that the petitioner was working as a load man for more than 12 years and earning a sum of Rs.300/- per day and the manner of accident are strictly to be proved by the petitioner. The accident was not happened in the course of employment and the accident was happened due to the negligence on the part of the petitioner and he has to claim compensation through the owner of the vehicle in which dashed against the petitioner. Therefore, the petition is liable to be dismissed.



C.M.A(MD)No.1422 of 2013

WEB COPY

5. Before the Tribunal, in order to prove the case of the petitioner, the petitioner himself examined as P.W.1 and also examined Doctor as P.W.2 and marked Exhibits P.1 to P.8 and on the side of the respondent, R.W.1 was examined and marked Exhibits R.1 to R.4.

6. After perusing the records and evidences, the Tribunal has awarded a sum of Rs.1,68,518/- by directing the respondent to pay the said amount. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been preferred by the appellant and the appeal has admitted on the following substantial question of law:

'Is not the claim barred under Section 3(1) of the Workmen Compensation Act as the injury caused to the respondent herein is not arising out of and in the course of employment?'

7. In this case, there is no dispute that the petitioner was working under the employment of the appellant / respondent and the petitioner before the Tribunal has categorically stated that he was working as load man for the past 12 years and he was earning a sum of Rs.300/- per day. According to the appellant / respondent, the respondent / petitioner has not



C.M.A(MD)No.1422 of 2013

sustained injury in the course of employment. The incident happened while he was proceeding to bring the change and the same is not connected with the employment and thereby, the incident was not happened in the course of employment. According to the respondent / petitioner, the authority at the time of settling the salary asked him to bring the change from the shop. Thereby, he went there and when he was acting under the instruction of the employer, the accident was happened. Therefore, the petitioner sustained injuries in the course of employment. In this regard, P.W.1 has categorically stated in this evidence that to share the salary while he was proceeding to bring change for Rs.1000/-, he sustained injuries. R.W.1 was examined and he also admitted the accident and there is no dispute that the injury sustained on the date of accident and he sustained permanent disability. Since the incident was happened relating to the employment, it has to be construed that the accident was during the course of employment. Therefore, the Tribunal also after relying the available evidences and considering that the respondent has not filed any contra evidence came to a conclusion that the accident took place during the course of employment. Therefore, there is no infirmity or perversity found in the order of the Tribunal. This Court also came to a



C.M.A(MD)No.1422 of 2013

WEB COPY

conclusion that the accident took place in the course of employment as per Section 3(1) of the Workmen Compensation Act. Therefore, the claim is not barred under Section 3(1) of the Workmen Compensation Act as the injury caused to the respondent is arising out of and in the course of employment. Thus, the substantial question of law is answered.

8. In the result, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

14.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Commissioner Workmen's Compensation (DCL),
Dindigul.

2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.1422 of 2013

P. DHANABAL, J.

BTR

C.M.A(MD)No.1422 of 2013

14.02.2024