



C.M.A.(MD)No.792 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 19.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.792 of 2012

and

M.P(MD) No.2 of 2012

The Management,
The Oriental Insurance Company Limited,
37, 1st Main Road,
Gandhi Nagar, Adaiyaru,
Chennai -20

... Appellant/2nd Respondent

-VS-

1. S.Thomas Seenivasan

... 1st respondent/Petitioner

2. Manickavalli

... 2nd Respondent/1st Respondent

3. M/s.Tool Fab,
E-7, 10, Developed Plots Estate,
Thuvakudi, Trichy – 15.

... 3rd Respondent/3rd Respondent

(2nd and 3rd Respondents remained *exparte*
before the Lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the award made in W.C.No.521 of 2004, dated 09.03.2012, on the file of the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour) Trichirappalli.



C.M.A.(MD).No.792 of 2012

For Appellant : Mr.C.Jawahar Ravindran
For Respondents : Mr.N.Sudhagar Nagaraj – for R1
: Mr.L.Siva
for Mr.G.Mohan Kumar– for R3
: No appearance – for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in W.C.No.521 of 2004 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Trichirappalli, wherein, the 1st respondent herein has filed the claim petition before the Tribunal seeking compensation due to the accident.

2. The Tribunal has awarded a sum of Rs.2,02,864/- (Rupees Two Lakhs Two Thousand Eight Hundred and Sixty Four only) and directed the appellant/2nd respondent to pay the said amount along with interest at the rate of 12% p.a within a period of 30 days. As against the order passed by the Tribunal, the appeal has been preferred by the appellant/second respondent.

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



C.M.A.(MD).No.792 of 2012

WEB COPY

4.The brief facts of the averments made in the petition before the Tribunal are as follows:

The petitioner was employed as a driver under the first respondent vehicle Ashok Leyland Tractor Lorry bearing Registration No.TN-25-9599. The first respondent is the owner of the vehicle and the said vehicle was insured with the second respondent. While so, on 17.09.2004, at about 11.30 hours, when he was working as the driver, the lorry was parked in Trichy M/s.Tools Fab Company. On 17.09.2004, after loading the materials and coming out side, as the driver of the first respondent Tractor Lorry, the petitioner who was about to take his lorry, while cleaning the front windscreen of the Tractor Lorry by holding the hand grips by standing in the bumper of the tractor lorry, in order to prevent from falling down, due to loss of balance caught hold of a chain which was hang nearby. At the time, 'A' frame wheel had fallen down on the head and thereby sustained injuries. He was admitted in the hospital on 17.09.2004 and discharged on 05.11.2004. Due to this accident he sustained permanent disability. He was aged about 23 years and he was earning a sum of Rs.5,000/- per month. Since the accident took place in the course of employment, the first respondent being the



C.M.A.(MD).No.792 of 2012

employer and the second respondent being the insurer of the first respondent vehicle are liable to pay compensation to the petitioners.

5. The appellant/second respondent filed a counter stating that the petition is not maintainable and the petitioner is put to strict proof the manner of accident, age, income and occupation of the petitioner. The F.I.R has not been registered immediately and it was registered only after two months. The accident has not took place during the movement of the vehicle and there is no relationship between the first respondent and the petitioner as employer and employee. The driver of the Lorry had no valid driving license on the date of accident. Therefore, the petition is liable to be dismissed.

6. Before the Tribunal, on the side of the petitioner, P.W.1 and P.W.2 were examined and documents Ex.P1 to Ex.P.6 were marked. On the side of the respondents, R.W. 1 and R.W.2 were examined and documents Ex.R.1 to Ex. R.5 were marked.

7. The Tribunal after considering the evidences adduced on either side awarded a sum of Rs. Rs.2,02,864/- (Rupees Two Lakhs Two Thousand Eight



C.M.A.(MD).No.792 of 2012

WEB COPY

Hundred and Sixty Four only) and directed the appellant/2nd respondent to pay the said amount along with interest at the rate of 12% p.a within a period of 30 days. As against the order passed by the Tribunal, the appellant/second respondent preferred the appeal on the ground that the F.I.R. was not registered immediately after the accident, and the accident was not took place while using the vehicle.

8. The learned counsel appearing for the appellant would contend that the accident has not happened while he was travelling in the vehicle and the accident took place in the premises of the third respondent and there was delay in registering the F.I.R and there is no relationship between the petitioner and the first respondent as employee and the employer. The criminal case was also closed as an industrial accident. The third respondent had already settled the amount and also admitted the industrial dispute. The vehicle was parked in the industry, at the time of accident. Therefore, the appellant/2nd respondent is no way liable to pay any compensation to the 1st respondent/petitioner. The above said aspects have not been considered by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Trichirappalli and granted compensation by directing the



C.M.A.(MD).No.792 of 2012

appellant/second respondent to pay the amount. Therefore, the order of the lower Authority is liable to be set aside.

9. The learned counsel appearing for the first respondent/petitioner would contend that the petitioner was working under the 2nd respondent/first respondent as a driver and the accident took place during the course of employment and thereby the 1st respondent/petitioner has proved the relationship as employer and employee and the first respondent is also not disputing the relationship on the date of accident. It is true that, there is a delay of 48 days in registering the F.I.R and the delay in registering the F.I.R alone is not a ground to deny the compensation to the 1st respondent/petitioner. The 1st respondent/petitioner after loading the goods while trying to clean the vehicle, sustained injuries. The Tribunal also considering the evidences adduced on either sides fixed the liability as against the appellant/second respondent. Therefore, the present appeal is liable to be dismissed.

10. The learned counsel appearing for the third respondent would contend that the accident did not take place while engaging in the industrial



C.M.A.(MD).No.792 of 2012

activities and at the time of cleaning the vehicle the driver fell down and on the date of accident the said vehicle was insured with the appellant/second respondent and there is no relationship between the petitioner and the third respondent as the employee and the employer. The Tribunal after careful consideration fairly awarded compensation by directing the appellant/2nd respondent. Therefore, the present appeal is liable to be dismissed as against this respondent.

11. This Court heard both sides and perused the available materials on record.

12. The second respondent/Insurance Company has filed this appeal on various grounds and also raised some of the substantial questions of law. It is an admitted fact that the 1st respondent/petitioner was working as driver under the 2nd respondent/first respondent. The 2nd respondent/first respondent has not denied the employment of the 1st respondent/ petitioner with him and the 1st respondent/petitioner was also examined as P.W.1 and he deposed about the relationship and he also sustained injuries during the course of employment. Immediately after the accident he was admitted in a hospital.



C.M.A.(MD).No.792 of 2012

WEB COPY

There is no dispute regarding that the petitioner was working under the 2nd respondent/first respondent and thereby proved the relationship as a employer and employee between the 1st respondent/petitioner and the 2nd respondent/first respondent. The only contention of the learned counsel for the appellant/second respondent is that the accident took place in the premises of the third respondent and the third respondent being principle employer is liable to pay compensation to the 1st respondent/petitioner. As far as the principle employer is concerned the 1st respondent/ petitioner was only working under the 2nd respondent/ first respondent as driver and he fell down from the lorry and thereby there is no relationship between the 1st respondent/ petitioner and the third respondent/third respondent industry. The Tribunal also in the order categorically discussed about the judgment in ***United India Insurance Company Limited Vs.Roop Kanwar and Another [2007 ACJ 1934 HC Rajasthan at Jodhpur]*** wherein the High Court of Rajsasthan held that when the claim is filed under Workmen's Compensation Act, the question whether the accident took place at a public place or not? is a not at all relevant and what is relevant is whether the accident arose out of and in the course of employment.



C.M.A.(MD).No.792 of 2012

WEB COPY

13. In this case, according to the 1st respondent/petitioner on 16.09.2004 the vehicle was taken to the premises of the third respondent/third respondent and on 17.09.2004 after loading the vehicle when he attempted to take the lorry the accident has happened. Therefore, while he was working under the 2nd respondent/first respondent, as the driver he sustained injuries. Therefore, the contention of the appellant that the 3rd respondent is liable to pay compensation to the petitioner is not acceptable. Though there is a delay of 48 days in registering the F.I.R, the delay alone is not a ground to deny the compensation. To that effect the Tribunal also relied upon the judgment in the case of ***Ravi Vs.Badrinarayanan & others [2011 (1) TNMAC 326 (SC)]***.

14. From the above said judgment it is clear that when the accident has happened while the petitioner was working and sustained injuries arising out of and in the course of employment the delay alone is not a ground to deny the claim of the petitioner. In this case, there is no dispute that the petitioner sustained injury when he was in the course of employment and the second respondent/ first respondent vehicle was insured with the appellant/second respondent and thereby the appellant/second respondent is liable to pay compensation to the 1st respondent/petitioner. The Tribunal also after



C.M.A.(MD).No.792 of 2012

elaborate discussion correctly allowed the petition and granted compensation.

Therefore, the order passed by the lower Authority is in order and does not warrant interference. Further, though the appellant has raised so many grounds and substantial question of law in the grounds of appeal all of them are on factual aspects and no substantial question of law is involved in this case. Therefore, this Court is of the opinion that there is no merits in the appeal and it deserves to be dismissed.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the order passed in W.C.No.521 of 2004, dated 09.03.2012, on the file of the Commissioner for Workmen's Compensation, (Deputy Commissioner of Labour) Trichirappalli is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

19.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi



WEB COPY



C.M.A.(MD).No.792 of 2012

To

1. The Commissioner for Workmen's Compensation,
(Deputy Commissioner of Labour) Trichirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.792 of 2012

P.DHANABAL,J.

ebsi

C.M.A.(MD)No.792 of 2012

19.03.2024