



C.M.A(MD)No.709 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 12.07.2024
DELIVERED ON : 22.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.709 of 2019
and
C.M.P(MD)No.8904 of 2019

Amuthavalli

... Appellant/Respondent

Vs.

Ebinezar

... Respondent/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, to set aside the order, dated 01.02.2019 passed in W.C.No.262 of 2012 on the file of the Commissioner for Workmen Compensation / Joint Commissioner of Labour, Trichy and allow the above Civil Miscellaneous Appeal.

For Appellant : Mr.M.Saravanan

For Respondent : Mr.D.Boopal



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JUDGMENT

The instant appeal has been filed by the employer challenging the award passed by the Commissioner for Workmen's Compensation / Joint Commissioner of Labour, Tiruchirappalli in W.C.No.262 of 2012.

2. According to the claimant, he is working as an employee / binder in a printing press in the name and style of Thirumalai Printers owned by the respondent in the claim petition. On 10.12.2011 at about 07.00 p.m., when he was undertaking the spiral binding work, he met with an accident while handling the machine and sustained crush and fracture injuries on his left hand finger. According to him, he was admitted to Deepan Hospital by his employer's husband and he had undergone an operation and he is still undergoing treatment.

3. The claimant has further contended that he is aged 44 years and he was earning a sum of Rs.5,000/- per month by way of salary and batta. According to him, the injury has been sustained by him in the course of and arising out of his employment as an employee / binder. A notice was issued



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to the employer for payment of compensation and they have issued a reply notice denying the allegations. Hence, the claim petition for claiming a sum of Rs.4,00,000/-.

4. The employer had filed a counter affidavit contending that the claimant had never worked in Thirumalai Printers at any point of time and no such incident has taken place on 10.12.2011 in the premises of Thirumalai printers. He had further contended that, the claimant has falsely implicated the respondent for the reasons best known to him. It is further contended that the petitioner with the assistance of a retired employee, namely, Jeyaraj is lodging various complaints to officials of the Labour Department with an intention to procure evidence and to gain un-lawful enrichment. Hence, he had prayed for dismissal of the claim petition.

5. The Workmen's Compensation Commissioner relied upon Exhibit P.1, discharge summary issued by the Hospital and proceeded to hold that the accident has taken place in the premises of Thirumalai Printers and therefore, it is in the course of employment and arising out of employment. The Commissioner has further found that the extent of disability as 20% and



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fixed the compensation at Rs.72,231/- and directed the employer to pay the compensation along with interest at the rate of 12%. Challenging the same, the present appeal has been filed.

6. The following substantial questions of law have been raised in the appeal:

"1. Whether in law the finding of the Commissioner that the claimant sustained injury in an accident arising out of and in the course of employment is sustainable in the absence of acceptable evidences on record?

2. Whether in law the Commissioner is justified in fixing the loss of earning capacity at 20% when no acceptable evidence was produced?

3. Whether the Commissioner is justified in fixing the loss of earning capacity of his own in the absence of assessment of the same by the qualified medical practitioner as required under 4(i) of the Workmen's Compensation Act?

4. Whether in law the learned Commissioner is correct in directing the appellant to pay the interest from the date of accident?"



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7. The learned Counsel appearing for the appellant had contended that except Exhibit P.1 discharge summary, there is no other document to establish the alleged fact that the claimant was working as a binder in the respondent Printing press. Merely because someone alleges that he had sustained injuries in a particular printing press, it cannot be a gospel truth, unless, it is established through legally acceptable evidence. In the present case, the employer has filed a counter specifically contending that, the claimant was not employed under her. In such circumstances, the entire burden is upon the claimant to establish the employer employee relationship and the accident has taken place in the course of employment. The initial burden upon the claimant has not been discharged and therefore, burden cannot be placed upon the employer to establish a negative aspect that the claimant is not an employee.

8. Per contra, the learned Counsel appearing for the claimant had contended that Exhibit P.1 discharge summary will clearly indicate the place of accident and the manner of accident. No contra oral or documentary evidence has been placed on record by the employer. He further contended that the disability at the rate of 20% has also been proved by the claimant.



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Hence, he has prayed for sustaining the award passed by the Commissioner.

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9. I have carefully considered the submissions made on either side and perused the materials available on record.

10. It is the specific case of the claimant that he was working as a binder in the Printing Press owned by the respondent when the accident has taken place. A perusal of the discharge summary indicates that the accident has taken place in Thirumalai Printers. The nature of injuries sustained by the claimant in his fingers also go to prove that such an injury is likely to be sustained in a Printing Press while undertaking binding work.

11. Though the respondent in the claim petition has contended that the claimant is not her employee, she has not chosen to enter into the witness box to establish the same by subjecting herself to cross-examination. The employer could have produced the attendance register or the wage register to prove that the claimant was not her employee. When the employer has not entered into the box or produced documents to dis-prove the case of the claimant, this Court is constrained to draw adverse inference against the



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employer.

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12. The employer is not able to establish any motive or reason for falsely implicating her Printing Press in the claim petition. The employer has not chosen to examine anyone on her side or marked any documents. Even the reply notice said to have been sent by the employer has not been marked by her. In such circumstances, this Court is of the considered view that there are no grounds to interfere in the award passed by the Commissioner for Workmen's Compensation.

13. There are no merits in the appeal and the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

22.07.2024

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



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To

- 1.The Commissioner for Workmen Compensation /
Joint Commissioner of Labour,
Trichy.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
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