

(2008) 01 MAD CK 0035
In the Madras High Court
Case No : C.M.A. No. 737 of 2001

Adithya Fero Alloys

APPELLANT

Vs

The Addl. Commissioner Authority under the Workmans
Compensation Act and M. Rose Mary

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)

Citation : (2008) 2 LLJ 268

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : N. Umapathi, for the Appellant; John Sakthi Vinothini, for Row and Reddy for R-2, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This appeal arises out of the order of Additional Commissioner for Workmen's Compensation, Karaikal in W.C. No.

1/1999.

2. Case of second respondent/claimant is that she was a labour under the appellant and that she was employed for the purpose of carrying old dirt

iron pieces for blasting at the work spot. According to the claimant, on 17.06.1998, when she was carrying the iron pieces, crane dashed her head

and her right hand and she sustained fracture injury in her right wrist joint. The respondent was taken to Community Health Centre, Thriunallar

where she was given first aid and was referred to Karaikal Government Hospital for further treatment. She has sustained permanent disability in her

right wrist joint and fingers. Respondent has filed claim petition claiming compensation of Rs. 6,04,800/-.

3. The Management resisted the application denying employment and employer-employee relationship. According to the appellant Management, it

does not employ women employees and claimant Rose Mary was never employed by the appellant Management at any point of time and

therefore, the question of paying compensation does not arise. The Management further averred that the respondent is in no way connected with

the appellant Management and therefore, it is not liable to pay the compensation.

4. Before the Commissioner, respondent examined himself as PW-1 an co-worker Muthulakshmi as PW-5. Co worker PW-5 was examined to

prove nature of injuries sustained. Doctors from Thirunallar and Government Hospital Karaikkal were examined as P.W.s 2 to 4 and 6. Onbehalf

of the respondent, Manager of Company was examined as RW-1. Upon consideration of evidence, Commissioner has held that the second

respondent was a "workman" employed for the purpose of carrying dirt iron pieces and while she was working under the opposite party, she

sustained injuries and the injuries were sustained out of and in the course of the employment. The Commissioner assessed the disability at 23% and

taking into monthly wages at Rs. 1,050/-, the Commissioner has awarded the compensation of Rs. 22.239/-.

5. Challenging the impugned Order, the learned Counsel for the Appellant has submitted that the respondent failed to prove employer-employee

relationship and the appellant Management never employed female workers, which aspect was not properly considered by the Commissioner. The

learned Counsel for the Appellant has further submitted that in the absence of any material evidence, the Tribunal erred in finding that the second

respondent was employed under the appellant and that she sustained injuries while she was working under the appellant.

6. Supporting the findings of the Commissioner, the learned Counsel for the respondent has submitted that on the basis of evidence of RWs 1 and

2, Commissioner has recorded finding and to that effect second respondent was a workman and such finding of fact cannot be interfered with by

the High Court.

7. The second respondent who examined herself as PW-1 has categorically stated that she was working in appellant Company under the direct

control of Management and that on 17.06.1998, while she was working, a crane

dashed her head along with right hand and she has sustained fracture injuries and co-worker Muthulakshmi who was examined as PW-5, has corroborated the evidence of PW-1 stating that the claimant was employed under the opposite party for the purpose of carrying old dirt iron pieces for blasting at the work spot. PW-2 has also spoken about the accident on 17.06.1998. By the consistent evidence of P.W.s 1 and 5, employer-employee relationship is proved by the claimant.

8. To substantiate its plea of absence of employer-employee relationship, on behalf of the Management, Attendance Register was produced, which did not contain any entry in respect of the claimant. As rightly observed by the Commissioner, the Management has produced Attendance Register only for production work. Appellant Management has not chosen to produce the Attendance Register for contract labour. The question whether the respondent was a workman and whether she was on duty on the fateful day i.e. 17.06.1998 is a finding of fact. Based on the evidence of P.W.s 1 and 2, Tribunal has recorded factual finding that the second respondent was employed with the appellant Management and that she sustained injury while she was working. Such factual finding cannot be interfered with unless shown to be perverse. There is nothing to suggest that the factual finding recorded by the Tribunal is erroneous.

9. The respondent sustained fracture injury in her right arm due to which her right arm movement is restricted. To prove the nature of injury and permanent disability suffered, before the Commissioner, claimant has examined four Doctors from Karaikkal and Thirunallar Government Hospital.

Based on the Disability Certificate and the Doctors' evidence, the Commissioner has fixed the permanent disability at 23%, for the purpose of computing loss of earning capacity of the workman.

10. The expression "" total disablement"" has been defined in Section 2(1)(i) of the Workmen's Compensation Act as follows:

Total disablement means such disablement, whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

11. The question for consideration is whether the disablement incapacitated the first respondent in doing work which he was able to do before or at the time of the accident. The disability and incapacity to earn to be

determined with reference to the work which the workman was doing at the time of the accident. Further, incapacity to earn is to be determined with reference to the nature of the work. The injured workman in this case is a driver by profession. Restricted movement of right hand would certainly affect his avocation consequently reducing his earning capacity.

12. The respondent, who was employed to carry dirt iron pieces to the work spot is a manual worker. The disability in the right arm has

permanently disabled the claimant from carrying on her avocation as a manual worker. The monthly wages of the claimant was fixed at Rs. 1,050/-

and the Commissioner has awarded the compensation of Rs. 23,239/-. The amount of compensation awarded cannot be said to be excessive or

unreasonable.

13. The findings of the Commissioner that the second respondent was in the employment of the appellant and that she had sustained injuries in the

course of her employment was a finding of fact based on evidence. Order based on appreciation of facts cannot be interfered with. No question of

law, much less substantial question of law is involved in this appeal. The appeal is devoid of merits and is bound to fail.

14. The appeal is dismissed with costs of the respondent. An amount of Rs. 5,000/- [Rupees Five Thousand only] shall be paid as costs to the

respondent. Cost of Rs. 5,000/- shall be deposited by the appellant before the 1st respondent in W.C. No. 1/1999 within six weeks from the date

of receipt of copy of this order.

15. The first respondent shall disburse the amount along with accrued interest to the respondent on necessary application being filed.