

(2015) 02 MAD CK 0499

In the Madras High Court

Case No : C.M.A. (M.D.) No. 1135 of 2011 and M.P. (M.D.) No. 1 of 2011, 1 of 2014

Branch Manager, United India Insurance Co. Ltd.

APPELLANT

Vs

V. Radhakrishnan and Others

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2015) 146 FLR 341

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : C. Jawahar Ravindran, for the Appellant; N. Sudhagar Nagarj, Advocates for the Respondent

Final Decision : Dismissed

Judgement

D. Hari Paranthaman, J—The appellant is the Insurance Company. The van owned by the second respondent was insured with the appellant-Insurance Company. According to the first respondent, he was employed as a loadman in the van. The van was carrying iron rods on 7.9.2007 from Chennai to Tiruchirappalli. When the van reached near Veppur, it involved in an accident. At the time of accident, the first respondent was in the van as loadman. In the accident, the loadman got injured. Immediately, First Information Report was lodged by one Muthu, his brother, before the Veppur Police Station, about the accident. He also took the first respondent to the Government Hospital, Pudukottai and admitted him on 7.9.2007 and he was in-patient from 7.9.2007 to 13.9.2007. He suffered 48% disability in the accident. The first respondent filed W.C. No. 351 of 2007 claiming compensation, before the Deputy Commissioner of Labour, Tiruchirappalli. The first respondent examined himself as P.W. 1 and also examined the Doctor as P.W. 2 to establish the disability, and marked Exs. A1 to A8. Ex. A1 is the First Information Report. Ex. A2 is the Accident Register and Ex. A3 is the Discharge Summary. The appellant herein

examined one official of the Insurance Company as R.W. 1 and documents Exs. R1 to R3 were marked. Exs. R1 and R2 are the letters said to have been written by the owner of the vehicle. As per those letters, one Muthu, S/o. Veerappan got injured in the accident.

After hearing both sides, the Deputy Commissioner for Workmen's Compensation, Tiruchirappalli, passed an order dated 3.8.2010, rejecting the contention of the appellant that the first respondent was not employed under the second respondent-Sargunam. Though the Doctor gave evidence that the first respondent suffered 48% disability, the Commissioner restricted it to 40% disability and awarded a compensation of Rs. 2,05,027/- (Rupees Two Lakhs Five Thousand and Twenty Seven Only). As against the order passed by the Commissioner, the present appeal is filed.

The learned Counsel for the appellant-Insurance Company vehemently contended that the first respondent was not employed as loadman in the van owned by the second respondent as per Exs. R1 and R2 and hence the Commissioner should have rejected the application.

2. On the other hand, the learned Counsel for the first respondent has submitted that the other person Muthu is the own brother of the first respondent and he was not injured, but the first respondent got injured. The second respondent-owner did not come before the Deputy Commissioner of Labour and he did not also file counter statement, and the letters said to have been written by the owner was disbelieved by the Deputy Commissioner of Labour. He has taken me through the original records and stated that the very signature varies. Further he submitted that the injured's brother Muthu, S/o. Veerappan, gave First Information Report that the first respondent Radhakrishnan, S/o. Veerappan got injured in the accident as per Ex. A1 and he took the first respondent to the hospital immediately and admitted as in-patient as per Exs. A2 and A3. If all these evidences are taken together, it could be seen that the first respondent was employed as loadman and got injured.

3. It is further submitted by the learned Counsel for the first respondent that the issue as to whether the first respondent was a workman or not is purely a question of fact and when the Deputy Commissioner had recorded a finding on facts, this Court could not normally interfere in the appeal under section 30 of the Workmen's Compensation Act.

4. I have considered the submissions made on either side and also perused the original records carefully.

5. The First Information Report Ex. A1 was given by the brother of the injured person, i.e., it was given by Muthu, S/o. Veerappan. According to Exs. R1 and R2, Muthu, S/o. Veerappan, got injured in the accident. But Muthu gave the First Information Report that it was only his brother Radhakrishnan, S/o. Veerappan got injured in the accident. Further, to the naked eye, Ex. R1 is signed by one person and Ex. R2 is signed by a different person. Though both the letters are

said to have been written by the owner, by name Sargunam, the signature totally differs. The owner is not available for cross-examination. Significantly, the witness examined on the side of the Insurance Company admitted that they conducted investigation and has filed a report on the investigation relating to the accident. But they did not produce those records before the Deputy Commissioner of Labour. The following passage from the order of the Deputy Commissioner of Labour is relevant in this case:

6. Therefore, it is evident that the appellant-Insurance Company has withheld the investigation report that was ordered by them. In this case, no reasons are given for not producing the report of the investigation conducted by them.

7. Further, as rightly contended by the learned Counsel for the first respondent, Exs. A1, A2 and A3 amply prove that it was the first respondent injured in the accident while he was working as a loadman with the second respondent. I do not find any infirmity in the order of the Deputy Commissioner of Labour. Therefore, the order of the Deputy Commissioner cannot be termed as perverse. Unless the order of the Deputy Commissioner is perverse, this Court could not interfere under section 30 of the Workmen's Compensation Act. Whether the first respondent is a workman employed by the respondent, is purely a question of fact and the Deputy Commissioner has rendered a finding that the first respondent is a workman. I am not inclined to interfere with the above said finding regarding the question of fact. Therefore, this Civil Miscellaneous Appeal fails and accordingly it is dismissed. Consequently, the connected miscellaneous petitions are closed. No costs. The first respondent is permitted to withdraw the entire amount of compensation lying to the credit of W.C. No. 351 of 2007 on the file of the Deputy Commissioner of Labour for Workmen Compensation, Tiruchirappalli.