
(2000) 04 MAD CK 0003
In the Madras High Court
Case No : A.S. No. 272 of 1987

D. Senthur Pandian	Vs	APPELLANT
A. Murugesan		RESPONDENT

Date of Decision : 08-04-2000

Acts Referred:

Workmens Compensation Act, 1923 — Section 10(1), 19, 19(2), 2, 3

Citation : (2000) 04 MAD CK 0003

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : Puspha Sathyanarayanan, for the Appellant; A. Muthukumar, for the Respondent

Final Decision : Allowed

Judgement

Mrs. Prabha Sridevan, J.—The defendant is the appellant. The respondent in the appeal filed the suit for damages for Rs. 41,100/- against

the defendant on the ground that he suffered serious injuries during his employment due to the defendant's negligence. The incident took place on

21.11.79. The respondent had lost his earning capacity on account of the negligence of the appellant, who was his employer who, placed the

groundnut bags negligently which fell resulting in the injury The claim was quantified by taking into account 38 years half wages and the doctor's expenses.

2. The appellant resisted the suit stating that the respondent was not his employee on 21.11.79 and that he had casually visited the appellant's shop

on 21.11.79, when groundnut bag fell on him and injured him. The respondent on an humanitarian ground had spent about Rs. 2,000/- to treat the

appellant, but not content with that, the respondent had lodged his claim before

the Deputy Commissioner for Workmen's Compensation.

3. An enquiry was held, wherein the Commissioner held the respondent was not an employee and the claim petition was dismissed. This order had

become final. The appellant, therefore, stated in his written statement that the respondent, who claims to be a workman cannot seek his remedy

before the Civil Court, since the Civil Court jurisdiction is barred. The appellant has also stated that the order passed by the Commissioner under

the Workmen's Compensation Act would operate as res judicata and on its ground, the present suit was not maintainable.

4. The trial Court viz., the Subordinate Judge, Udumalpet framed four issues for consideration.

5. On the basis of the pleadings and the evidence adduced before the trial Court, the learned Judge held on Issue No. 1 that on the date of the

occurrence, the respondent was an employee of the appellant. On the question, whether the institution of the claim before the Workmen's

Compensation Commissioner, would operate as res judicata the learned Judge answered in the negative. Thereafter, the learned single Judge has

proceeded to consider the various exhibits filed by the respondent to, show the expenses incurred by him for medical treatment and decreed the

suit for Rs. 10,000/-, as against the claim of Rs. 41,000/- on the ground that the appellant has not denied that, on the date of occurrence, a

groundnut bag did fall on the respondent, at his premises which caused injury and that the respondent had also undergone treatment for the same.

6. Aggrieved by this, the defendant has filed the present appeal on the ground that the Civil Court ought not to have heard the matter, as its

jurisdiction is barred u/s 19(2) of the Workmen's Compensation Act, 1923 (hereinafter referred to as the Act) and that once the respondent had

elected to go before the Commissioner under the Act, he cannot maintain a suit in view of Section.3(5) of the Act. The appellant also questioned

the quantum decreed by the learned Judge, on the ground it had been fixed arbitrarily and without any material to support the same.

7. A perusal of the order, which is marked as Ex. A 26 shows that the respondent had filed his claim before the Commissioner, Workmen's

Compensation at Coimbatore and the matter was heard on several dates before it was finally disposed of. The respondent was represented at this

hearing by the President and Member of the Kamaraj National Trade Union Congress. The Commissioner came to the conclusion that the respondent is not a workman as per the Act and declined to give compensation. However, the Commissioner had made certain observations on humanitarian grounds directing the appellant to give him some employment. This order was passed on 23.3.82. On 25.3.82, the respondent had issued the suit notice and filed the suit some time thereafter. In the plaint, the respondent has not referred to the filing of the claim before the Commissioner or dismissal thereof. It is in the written statement that the appellant objects to the jurisdiction of the Civil Court, inspite of which, the learned trial Court holding that he had jurisdiction proceeded to try the suit. The relevant sections of the Act is extracted hereunder:

Sec. 3(5) of the Workmen's Compensation Act:

Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil

Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a

workman in any Court of law in respect of any injury

a) if he has instituted a claim in compensation in respect of the injury before a Commissioner: or

b) if an agreement has been come to employer providing for the payment of compensation in respect of the injury in accordance with the provisions

of this Act.

Sec. 19 Reference to Commissioners: (1) If any question arises in any proceedings under this Act as to the liability of any person to pay

compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation

(including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.

2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or

dealt with by a Commissioner or to enforce any liability incurred under this Act.

It is seen from Sec. 3(5) of the Act that if any workman had instituted a claim to compensation in respect of any injury, then the same workman

cannot file a suit for damages for the same injury and it is seen from Sec. 19

that if the Commissioner is required to settle, decide or deal with any question under this Act, the Civil Court's jurisdiction with regard to the said question is ousted.

8. The counsel for the appellant Mrs. Pushpa Sathyanarayanan would, therefore, urge that having instituted a claim before the Commissioner and having invited an adverse order, the respondent cannot go before the Civil Court again, since such a suit is clearly barred. The Workmen's Compensation Act is no doubt a labour friendly legislation and hence the provisions of the Act should be so construed as to advance the cause of the workman, but this provision has been introduced to protect the employer from being proceeded against, in two for a. since it would amount to double jeopardy.

9. To support her case, the learned counsel appearing for the appellant cited T.S. Alagappa Mudaliar Vs. A.L.V.R.S.T. Veerappan Chettiar and

Another, , In that case, the claim before the Commissioner was rejected as time barred. Thereafter, the Workman filed a suit, which was dismissed

on the ground that it is barred by Sec.3(5). Against the dismissal of the suit, it was contended that a claim that has been rejected in limine will not

be a claim instituted for the purpose of Sec.3(5). To this contention, this Hon''ble Court held in that case ""The section speaks of a claim being

instituted, ""Instituted"" implies the formal making of a claim before some tribunal and is not the same as making a claim of the employer"". The

Hon''ble Court further held that

The application was treated as a claim for compensation by the commissioner. It was admitted and the commissioner made enquiries, called for

particulars from the appellant in connection with his claim for compensation; the appellant furnished those particulars. It is impossible to construe

Ex.1 as anything but an application for a claim for compensation. If Ex. 1 was a claim for compensation before the commissioner, then it is clear

that the suit is barred by S.3(5) of the Act. It has been contended that a claim that has been rejected in limine would not be a claim instituted

before the commissioner within the meaning of Sec.3(5)

(a) The wording of S. 10(1):

No proceedings for the recovery of compensation shall be maintainable before a commissioner.... unless the claim for compensation with respect

to such accident has been instituted within six months of the occurrence of the accident...

is referred to in support of that argument. The whole of S.10(1) however indicates that the claim for compensation is of the nature of a plaint

without which no proceedings for the recovery of compensation are maintainable; so that the words relied on only mean that unless there is a

formal claim for compensation the commissioner cannot make any enquiries or conduct any proceedings. In the present case, proceedings did

however take place and the claim for compensation was instituted and was admitted by the commissioner. Section 3(5)(a) therefore clearly

applies, and the lower Courts were right in holding that the suit was barred

10. The learned counsel for the appellant also relied on the decision reported in AIR 1957 Madras 216. In that case, the dependants of a

workman, who had died, first filed a claim under the Act and then withdrew it before notice was ordered. Thereafter, the dependants filed a suit.

This Hon^{ble} Court held that "instituted" in Sec.3(5) is more than a mere filing of a claim, when it is applied to the legal proceedings, it signifies

commencement of proceedings that is "setting on foot an enquiry".

11. The learned counsel in particular pointed out of this Hon^{ble} Court in the aforesaid decision regarding Sec.3(5) and the manner in which the

right of election was given to the workman and the discussions is extracted as follows:

This has resulted in the provisions being made for alternative remedies. The workman may, as an alternative to accepting compensation under this

Act, elect to avail himself of any other remedy against the employer's at common law, that is to say, in tort for damages for negligence or wilful act

of the employer or of some person for whose act or default the employer is responsible, or under the Employer's Liability Act, or against any other

person. But he cannot have the best of both the worlds and put his employer not only against double payment but also against double proceedings.

The option given to a workman by these provisions either to claim compensation under this Act or take other proceedings, cannot be confined to

an option binding only in the case of success. Thus, if a workman brings an unsuccessful action for damages against his employer, he would be

debarred from claiming compensation under the Act. Conversely, if a workmen

instituted a claim for compensation under the Act and falls, he is then debarred from commencing an action for damages at common law or under the, Employer's Liability Act. What would amount to an institution of a claim for compensation under the Act is a question of fact depending upon the circumstances of the case (see page 103 of A.N. Aiyar, Enclopaedia of Labour Laws, Vol.IV).

12. The counsel, therefore, stated that having made his election and gone before the Commissioner, the respondent was not entitled to proceed against the appellant by way of a civil action.

13. On the other hand, the counsel for the respondent argued that his clam before the Workmen's Compensation Commissioner, was dismissed on the ground that he was not a workman and therefore, it was a dismissal in limine without going into merits. The counsel for the respondent would, therefore, state that since his claim under the Act had been rejected on the ground that he was not a workman, he is entitled in Law to sue for damages on the ground of the appellant's negligence. The learned counsel would therefore say that the Civil Court would still have the jurisdiction to decide whether the appellant had a tortuous liability to pay for his negligence.

14. The counsel for the respondent relied on a decision reported in.1992 ACC 154, where the Kerala High Court holds that the scope and claim of the Act is not to take away from the Civil Court the right to decide a tortuous claim. In the said decision, the learned Judge refers to a Madras High Court decision reported in 1967 Madras stating that a workman has the liberty to avail himself of a remedy in tort for damages.

15. This proposition, no doubt is correct, but the question in the instant case is, does a workman, who after having elected to go before the Commissioner, under the Act and having lost, is entitled to try his chances again in a Civil Court. In the case referred to above and relied on by the counsel for the respondent, the learned judge correctly says that there is a liberty to elect, but once having elected, the workmen can only be held to have forfeited his right to avail of other remedies.

16. This Hon"ble Court in the decision reported in 83 L.W. 545 reiterates the above principle:-

It is true that the Workmen's Compensation Act which is a special enactment

intended to provide for payment by certain classes of employers to their workmen of compensation for injury by accident prescribes a special forum and a special procedure before the forum and entitles only a special class of dependants (indeed some of the claimants in this case would be dependants within the meaning of Sec.2 clause (d) of the Workmen's Compensation Act) to claim compensation under that Act. But clause (5) of Sec.3 of option to the claimants to choose either the forum prescribed by the Workmen's Compensation Act or the Civil Court, and once the claimants elects either forum, they would be precluded under that clause from resorting to other forums".

The above propositions are to the effect that once the claimants under the Act elect one forum, they are precluded from resorting to the other.

17. No doubt, the exclusion of jurisdiction of the Civil Court cannot be readily assumed, but where such exclusion is explicitly stated or expressly provided for under certain circumstances, then the ordinary Civil Court cannot have jurisdiction, when the aforesaid circumstances have arisen. In the instant case, the respondent had elected to go before the Commissioner under the Act and he lost. His right to approach the Civil Court had, therefore, become barred.

18. The learned counsel for the respondent strenuously urged that the respondent would at least be entitled to a decree for damages, since he was not a workman as per the order of the Deputy Commissioner marked as Ex.A.26. Therefore, the exclusion of Civil Court provided u/s 3 (5) and Sec. 19 of the Act cannot apply to him. But it is clear from the pleadings filed in the present suit that he had again claimed to be an employee of the defendant, earning a salary of Rs. 200/- per month and this was also accepted by the trial Court. Therefore, the counsel for the respondent cannot be heard to say that since he is not a workman, the provisions of the Act are not applicable to him.

19. The counsel for the appellant stated that the respondent had gone before the Commissioner under the Act and having lost, has come to the Civil Court suppressing the earlier proceedings. The learned Trial" Judge failed to advert to the aforesaid sections of the Act, which clearly barred the jurisdiction of the Civil Court.

20. Since on the question of jurisdiction, it is held that the suit itself is not

maintainable, the other arguments advanced by the learned counsel for the appellant regarding the adequacy of pleadings to show negligence and to establish the quantum of damages are not gone into. I would like to place on record the appreciation of this Court for the assistance rendered by Mr. A. Muthukumar, appointed as Amicus-Curiae by this Hon''ble Court to argue the case of the respondent. In the result, the judgment and decree of the trial court is set aside and the appeal is allowed. No order as to costs.