

(2015) 08 MAD CK 0063

In the Madras High Court

Case No : C.M.A. (MD) No. 206 of 2004 and C.M.P. (MD) No. 1484 of 2004

Divisional Manager, New India Assurance Co. Ltd. and Others APPELLANT

Vs

B. Panneerselvam and Others RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Citation : (2015) 4 LLJ 158

Hon'ble Judges : P. Devadass, J.

Bench : Single Bench

Advocate : S. Manohar, B. Vijay Karthikeyan, Advocates assisted by S.P. Vijay Nivas, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

P. Devadass, J.—The insurer (appellant) of the insured (2nd respondent) has directed this Civil Miscellaneous Appeal. First Respondent has been engaged in the lorry TN 59 M 6511 owned by the second respondent. There is no dispute that the said vehicle has been insured with the appellant viz., New India Assurance Company Ltd. On 14.04.2003, in the said lorry, tomato consignments have been brought from Andhra Pradesh to Koyampedu Market in Chennai. An incident took place while the said consignments were unloaded. The first respondent rolled down from the lorry and sustained grievous injuries. In this connection, the first respondent filed W.C. No. 134 of 2003 before the Commissioner for Workmen Compensation, Dindigul.

2. Before the said official, petitioner examined himself as P.W. 1 and Dr. Elangovan as P.W. 2 and marked Exs. P. 1 to P. 12. On the side of the respondents two witnesses have been examined and certain documents also have been marked.

3. The Commissioner after hearing both sides and appreciating the said evidence came to the conclusion that the petitioner sustained injury while he was in the employment of the second respondent. As the second respondent's vehicle has

been injured with the appellant, the Commissioner directed the appellant to pay Rs. 4,94,280/- as compensation within a stipulated time, in default, it will carry 12% simple interest also.

4. Aggrieved, the insurer has directed this Civil Miscellaneous appeal.

5. At the time of admission, the following substantial questions of law were formulated by this Court:

"1. Is not the learned Commissioner required to enquire whether the occurrence of an alleged accident was true or stage managed?

2. Is not the claimant required to prove that he was totally unfit for any employment whatsoever in order to get the benefit of total disability for earning power?

3. Is the Commissioner under the Act empowered to assess the disability of a workman in respect of a injury referred to in Section 4(1)(c)(ii) of the Act?

4. Is the Commissioner under the Act, entitled to fix the compensation based on his own assessment of disability in respect of non schedule injury?

5. Is not the Commissioner under the Act required to refer the workman before a Medical Board constituted for the purpose to ascertain the extent of loss of earning capacity of a workmen?

6. Has not the Commissioner exceeded jurisdiction and exercised jurisdiction not vested in him under the Act, by assessing the disability and the consequent compensation?"

6. The learned counsel for the insurance company contended that it is a bogus claim and was long delay in lodging the F.I.R. He would also contend that determining 100% disability is highly excessive and it has resulted in granting an astronomical figure as compensation and thus the award amount appears to a bounty, bonanza to the claimant. It is not a just compensation. The Commissioner for Workmen Compensation has not taken into account all relevant facts in determining the compensation.

7. I have considered the submissions made by the learned counsel for the petitioner, perused the material on record and the impugned award of Commissioner for Workmen Compensation, Dindigul.

8. Workmen Compensation Act was enacted in 1923. It is a social welfare legislation. It is also social security measure for workers. There is a marked difference in claiming compensation under law of torts, under Motor Vehicles Act and under Workmen's Compensation Act. Proof of negligence assumes signal importance in a claim under law of torts, under Motor Vehicles Act. However, under Workmen's Compensation Act, the criteria is different. It must be established that the injured or deceased has been in the employment of a person. The accident should be arose out of and in the course of employment.

The accident may take place within the precincts of an industrial unit. Even if such accident takes place outside the precincts of the factory, if it is out of and in the course of employment, then applying notional extending principle that also will be brought under the workmen's compensation Acts. The Workmen Compensation Commissioners also adopts the principles laid down in various motor accident claims cases for assessment of compensation.

9. Bogus claims in the road accident cases and the industrial accident cases have been made in large number because it involves money. But delay in lodging F.I.R. does not assume signal importance in all these cases. In Workmen Compensation Cases filing of F.I.R. is not a condition precedent.

10. In this case P.W. 1 spoken to about the incident. To prove the injury suffered by him medical evidence and medical records also has been adduced, nature of injury and disability also has been demonstrated by evidence. In such circumstances, the arguments based on delay in F.I.R. to paint a picture of bogus claim did not take us to its logical conclusion.

11. Now, in this case, the first respondent was employed in the lorry belonging to the second respondent. The appellant did not deny the insurance coverage for the vehicle involved in the accident. Even the second respondent would not be able to succeed that the first respondent is not an employee under him.

12. Wound certificate has been marked. Dr. D. Ilangovan has been examined to speak about the injury, nature of injury and the disability.

13. Now, in this case, it has been established that the first respondent is a driver by profession. He is a vehicle driver.

14. Disability is of several types. It may be physical disability. It is easy to understand what is physical disability. There is functional disability. Functional disability disentitles a person from earning by engaging himself in the trade/profession to which he has been trained and engaged. For instance, for a carpenter, hand is very important. It is his basic tool. In such a case because of disability, if the Carpenter loses his hands he cannot do carpentry work. It is fatal. However, care must be taken while dealing with functional disability. It should not be magnified and it should not also be minimised. The principle is that the person must be totally disabled to engage himself in the function in which he is ordinarily qualified to do so and engaged.

15. Now in this case, the first respondent has been proved to be a driver. Medical evidence is such that he cannot drive a vehicle. There was serious damage to his nervous system. It would be very serious for others to engage/ask such a person to drive a vehicle. Therefore, in such circumstances, the Commissioner after analysing the material on record, arrived at the conclusion that the first respondent is totally disabled to function as a driver. This is a correct view.

16. After taking into account his age factor his salary and other relevant factors applying the accepted principles the Commissioner determined the compensation

payable to him. There is no patent illegality or perversity in the Commissioner's conclusion.

17. In the light of the above, we answer all the substantial questions of law as against the appellant. In view of the foregoing this Civil Miscellaneous Appeal fails and it is dismissed. However, there is no order as to the cost. As the entire amount has been deposited before the Deputy Commissioner of Labour, Dindigul, on filing appropriate application the first respondent shall be paid the entire amount, if it is not paid already either wholly or partly. Consequently, connected C.M.P. (MD) No. 1484 of 2004 also stands dismissed.