

(2013) 09 MAD CK 0142

In the Madras High Court

Case No : C.M.A. No. 3716 of 2008 & C.M.A. No. 3719 of 2008

Maadhavan

APPELLANT

Vs

V. Amudha and The United India Insurance Company Ltd.

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0142

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; V.K. Rajagopal for R1 and Mr. T. Ravichandran for R2, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The appellant/applicant has preferred the present appeal against the Order dated 15.05.2006, made in W.C. No. 538 of

2003, on the file of the Commissioner for Workmen's Compensation, Salem. The short facts of the case are as follows:-

The appellant/applicant had filed an application in W.C. No. 538 of 2003, on the file of the Commissioner for Workmen's Compensation, Salem,

against the respondents herein, claiming a sum of Rs. 1,00,000/- as compensation, stating that on 14.10.2002, at about 02.00 a.m., the applicant

and others were coming in a lorry bearing registration No. TNX 3426 loaded with raw materials for making broomsticks, from Kotagiri to

Sathiyamangalam and when the lorry was nearing Chinnakallipatti junction, the driver of the said lorry turned to the left side to avoid hit on the

vehicle, which was coming in an opposite direction and as a result, the lorry had capsized on the left side of the main road. Due to the said

accident, the appellant and others were seriously injured and hence, the appellant had been admitted in hospital as an inpatient for medical treatment.

2. Further, the appellant/applicant had stated that he was paid a sum of Rs. 100/- per day by the first opposite party as a load-man. Regarding the accident, a criminal case in Crime No. 315 of 2002 had been registered on the file of the Sub-Inspector of Police, Sirumugai Police Station, Coimbatore District, against the driver of the lorry. The said lorry had been insured with the second opposite party Insurance Company.

3. The second opposite party had filed a counter statement and resisted the claim petition. The second respondent herein had denied the accident as stated by the applicant and further the applicant and others did not travel on the lorry along with the raw materials and they were travelling on the lorry as passengers with the knowledge of the first opposite party. The lorry used as a goods carrier. As such, the permit conditions of the vehicle were violated. Therefore, the Insurance Company was not liable to pay compensation and there was no employer-employee relationship among the first opposite party and the appellant.

4. Further, they had stated regarding the various alleged happenings, but without being supported by any material evidences whatsoever. Hence, This Court can only recognize the allegations as hypothetical and hence rejects the same.

5. The Insurance Company had further stated that since the applicant was not a workman under the first opposite party, before filing the application, the applicant had no locus standi for claiming compensation under the Workmen's Compensation Act. Further, they had denied the nature of injuries, mode of treatment and period of treatment. Further, they had stated that number of persons, who were travelling in the lorry, the materials said to have been carried in the lorry, were only the materials for broomsticks. In the very nature of things, it was absolutely not likely that the persons were transported in the lorry as load-men. Therefore, they prayed to dismiss the said application.

6. On considering the averments of both parties, the Commissioner of Labour, Salem, had framed five issues namely:

i. Whether the applicant was a load-man under the first opposite party at the

time of the accident and during the course of employment he had sustained injuries in the accident?

ii. What is the age and salary of the applicant at the time of the accident?

iii. What is the loss of earning capacity?

iv. What is the quantum of compensation, which the applicant is entitled to? and

v. Who is liable to pay compensation?

7. On the side of the applicant, two witnesses were examined as P.Ws. 1 and 2 and six documents were marked as Exs. P1 to P6 namely FIR,

driving licence, copy of the policy, wound certificate, X"ray and disability certificate. On the side of the opposite parties, no witness was examined

and no document was marked.

8. P.W. 1 had adduced evidence that one Mani of Sathiyamangalam came to his native place and asked him that he required 20 persons to cut the

grass at Kotagiri. As such, he along with 15 persons went to Kotagiri and engaged in cutting of grass, arranged the same as bundles and then

loaded on to the lorry on 13.10.2002 during the evening.

9. Further, he had stated that when the lorry was nearing Chinnakallipatti junction, the driver of the said lorry had turned left side to avoid a hit on

the vehicle, which was coming in an opposite direction and as a result, the lorry had capsized on the left side of the main road and due to the

accident, the appellant and others were seriously injured and underwent treatment at the Government Hospital, Sathiyamangalam and at

Coimbatore Medical College Hospital and at Sri Amman Hospital, Anthiyur as inpatient.

10. P.W. 2 had adduced evidence regarding nature of injuries, mode of treatment and disability measurement.

11. On recording the evidences of the witnesses and arguments advanced by the learned counsels on either side and on scrutinizing the documents

marked by the claimant, the Commissioner for Workmen's Compensation, Salem, had dismissed the compensation application.

12. Aggrieved by the order of dismissal, the appellant/applicant has preferred this civil miscellaneous appeal.

13. The highly competent counsel appearing for the appellant has argued that the Commissioner for Workmen's Compensation, Salem, failed to

note that the factum of accident and the injury sustained by the appellant are not in dispute. There is also no dispute about the fact that the accident

occurred while the injured was engaged in his employment. The contention that the accident did not occur out of and in the course of employment

in the opposite party is without any substances.

14. Further, he has argued that one Mani of Sathyamangalam came to the native place of the appellant/applicant and engaged him and others as

load-men and accordingly all the employees went to Kotagiri and gut the grass, bundled the same and loaded the bundles in the lorry and all the

employees travelled along with the grass bundles. While the lorry was nearing Chinnakallipatti, another vehicle was coming in the opposite

direction. Therefore in order to avoid collusion with the said vehicle, the driver of the lorry turned to left side and as a result the lorry had capsized

and the applicant and others had sustained grievous injuries and they underwent medical treatment at different hospitals for their injuries. In order to

prove that the accident had happened during the course of their employment, FIR was registered. Regarding the nature of injuries, mode of

treatment and disability, medical records were marked and the Doctor had adduced evidence on disability and nature of injuries.

15. The very competent counsel has argued that the appellant/applicant was paid a sum of Rs. 100/- per day as wage, the appellant proved his

case before the Commissioner for Workmen's Compensation beyond doubts.

16. On the first opposite party, no one had appeared and not resisted the compensation application before the Commissioner for Workmen's

Compensation. Further, the offending lorry had been insured with the second opposite party and the same was not denied by the second opposite

party through oral and documentary evidence.

17. The highly competent counsel appearing for the first opposite party has submitted that the applicant and others were travelling along with grass

bundles on the said lorry and while the lorry was coming from Kotagiri, the lorry had capsized. Regarding the said accident, FIR had been

registered against the driver of the lorry.

18. The highly competent counsel appearing for the Insurance Company has submitted that in the instant case there is no nexus between the first

opposite party and the applicant as employer and employee. Further, there is no

authenticated records that the appellant was engaged as load-man by one Mani on behalf of the first opposite party, as alleged by the applicant. Actually, the applicant and others were travelling as gratuitous passengers on the goods carrier vehicle as such there is a breach of permit condition. Therefore, the Insurance Company is not liable to pay compensation.

19. Further, the learned counsel has submitted that the applicant and others have created medical records and misconstrued the compensation petition in order to receive wrongful compensation from the Insurance Company. Therefore, the learned counsel prays the Court to dismiss the appeal.

20. In the instant case, the appellant counsel has not produced relevant records namely deposition of witnesses, exhibits marked by the applicant and the Registry had not received connected records from the Commissioner of Workmen for Compensation and the applicant had filed the claim application in the year 2003. Therefore, this Court is constrained to pass a final order on the basis of the available records.

21. On verifying the factual position of the case and arguments advanced by the learned counsel on all sides and on scrutinizing the dismissal order,

this Court is of the view that FIR had been registered in Crime No. 315 of 2002, on the file of the Sub-Inspector of Police, Sirumugai Police

Station, Coimbatore District for the offence under Sections 279 and 337 I.P.C., against the driver of the lorry bearing registration No. TNX 3426,

which had been involved in the accident and the applicant and others were travelling on the lorry along with grass bundles and the applicant and

others had sustained injuries. The same has been noticed through FIR and wound certificate, which had been marked by the applicant.

22. Further, the said vehicle had been insured with the second opposite party and in order to prove the same a copy of the policy was marked as

Ex. P3 and the driving licence of the driver of the lorry was marked as Ex. P2. The Doctor had adduced evidence and issued a disability certificate

and he is a qualified medical practitioner.

23. This Court's further view is that the opposite parties did not conduct the case effectively by way of adducing evidence, since the aggrieved

person sought remedy against the opposite parties. Therefore, on the strength of

the above mentioned exhibits, which are existing and issued by the competent persons like the Sub-Inspector of Police and the medical practitioner, this Court is inclined to grant a sum of Rs. 40,000/- to the applicant as compensation, as it is found to be appropriate in the instant case in order to meet out the ends of justice.

24. Therefore, this Court directs the second respondent Insurance Company to deposit the above said compensation of Rs. 40,000/-, within a period of four weeks from the date of receipt of a copy of this Order, to the credit of W.C. No. 538 of 2003, on the file of the Commissioner for Workmen's Compensation, Salem, failing which the compensation amount will carry interest at the rate of 12% per annum, from the date of filing the compensation petition till the date of deposit of the said amount.

25. After such a deposit having been made, it is open to the appellant/applicant to withdraw the compensation amount, lying in the credit of W.C.

No. 538 of 2003, on the file of the Commissioner for Workmen's Compensation, Salem, after filing a memo along with a copy of this Order and after identification of the applicant by his counsel. In the result, this civil miscellaneous appeal is partly allowed and the order dated 15.05.2006, made in W.C. No. 538 of 2003, on the file of the Commissioner for Workmen's Compensation, Salem, is set aside. Consequently, connected miscellaneous petition is closed. No costs.