
(2013) 09 MAD CK 0218
In the Madras High Court
Case No : C.M.A. No. 1925 of 2007

M/s. Bajaj Allianz General Insurance Company Ltd.	APPELLANT
Vs	
Malleswari and Krishna	RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0218

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

Bench : Single Bench

Advocate : K.S. Narasimhan, for the Appellant; V. Velu for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/second opposite party has preferred the present appeal against the Order dated 11.04.2007, made in W.C. No. 419 of 2005, on the file of the Commissioner for Workmen's Compensation (DCL-II), Chennai.

The short facts of the case are as follows:-

The applicant has filed the claim petition in W.C. No. 419 of 2005, before the Commissioner for Workmen's Compensation (DCL-II), Chennai, claiming compensation of a sum of Rs. 7,00,000/- from the opposite parties for the death of her son Chandrasekar, in an accident arising out of and while doing his duty in the course of employment under the first opposite party. It was submitted that the deceased Chandrasekar was working as a driver of the first opposite party's car bearing registration No. TN10 K3584 and earning a sum of Rs. 4,500/- per month and batta of Rs. 50/- per day.

2. It was submitted that on 12.10.2005, at about 02.30 a.m., when the deceased Chandrasekar was driving the opposite parties' car from Chennai to Pondicherry and when it was near Ellaiamman Temple and proceeding on the east seashore road, he had dashed the car against the vehicle bearing registration No. KL01 AH2277. As a result, the deceased Chandrasekar sustained grievous injuries and

was admitted at Maduranthagam Government Hospital, where he was pronounced dead. Hence, the applicant had filed a claim petition against the opposite parties, who are the owner and insurer of the car bearing registration No. TN10 K3584.

3. The first opposite party in his counter affidavit has submitted that the deceased Chandrasekar was working as a driver of his car bearing registration No. TN10 K3584 from the year 2004 onwards and that he was receiving a salary of Rs. 4,100/- per month. It was submitted that the deceased had died in the accident during the course of his work under his employment and that as the first opposite party has been insured with the second opposite party at the time of accident only the second opposite party is liable to pay compensation.

4. The second opposite party in his counter affidavit has denied the averments in the claim regarding employer-employee relationship between the first opposite party as well as the age, income and occupation of the deceased as well as the date and time of the accident. It was submitted that as the first opposite party was the uncle of the deceased and as there was no employer-employee relationship between the first opposite party and the deceased and as the deceased did not have a valid licence to drive the car at the time of accident, the second opposite party is not liable to pay any compensation. It was submitted that as per the inquest report and police records, it was seen that the deceased was working as a cine artist and that he was not working as a driver.

5. On considering the averments of both sides, the Deputy Commissioner of Labour had framed two issues namely:

- i. Did the applicant's son namely Chandrasekar employed as a workman as per the Workmen's Compensation Act? Did he die due to injuries sustained in an accident arising out of and while doing his duty during the course of employment under the first opposite party? What is the age and income of the deceased? and
- ii. What is the quantum of compensation, which the applicant is entitled to get? Who is liable to pay compensation?

6. On the applicant's side, the applicant was examined as P.W. 1 and six documents were marked as Ex. P1 to P6 namely Ex. P1-Copy of FIR, Ex. P2-Copy of RC Book, Ex. P3-Copy of Insurance Policy, Ex. P4-Postmortem report, Ex. P5-M.V.I's report and Ex. P6-Driving Licence. On the opposite parties side, one witness was examined as R.W. 1 and two documents were marked as Ex. R1 and Ex. R2 namely Ex. R1-Letter of the first respondent dated 11.01.2007 and Ex. R2-Details of O.D. Claim Settlement.

7. P.W. 1 had adduced evidence that the deceased Chandrasekar was her son and that he was aged 23 years at the time of accident. She deposed that her son had been working under the first opposite party as a driver of his car bearing registration No. TN10 K3584, for two years and getting a monthly salary of Rs. 4,500/- and a daily batta of Rs. 50/-. She deposed that on 12.10.2005, at about

02.30 p.m., when her son was driving the car from Chennai to Pondicherry and when the car was proceeding on the ECR road and near Ellaiamman Temple Check Post, it had been involved in a collision with a bus operated by Rathimeena Travels. She deposed that her son had sustained injuries and admitted at Maduranthagam Government Hospital, where he was declared dead. In support of her evidence, she had marked Exs. P1 to P6.

8. R.W. 1 Mr. V.S. Durairaj, the senior legal executive officer of the second opposite party had adduced evidence that the Car O.D. claim settlement had been paid. He deposed that the coverage of insurance of car was from 04.02.2005 to 03.02.2006 and that the driver of the first opposite party's car had a valid driving licence and that coverage of insurance would be extended to him for the driver of proved to be "workman" and that if he is a relative to the owner of the car, he would not file any claim against the Insurance Company.

9. The Deputy Commissioner, on scrutiny of Exs. P1 and P5, observed that the applicant's son had been employed as a driver of the first opposite party's car bearing registration No. TN10 K3584 and that the accident had occurred on 12.10.2005, while he was doing his duty under the employment of the first opposite party. It is seen on scrutiny of Ex. P4 that the deceased had died due to injuries sustained in the said accident. On scrutiny of Ex. P12 RC Book, it is seen that the said car was owned by the first opposite party and on scrutiny of Ex. P3, it is seen that the car had been insured with the second opposite party at the time of accident. Hence, the Tribunal, on scrutiny of documentary evidence, held that the deceased Chandrasekar was a "workman" and that he had died due to injuries sustained in an accident arising out and while doing his duty in the course of employment under the first opposite party.

10. On scrutiny of Ex. P4 postmortem report, it is seen that the deceased was aged 23 years at the time of accident. As no documentary evidence had been marked to prove the income of the deceased, the Deputy Commissioner held that the notional income of the deceased could only be taken as Rs. 3,947/- per month as per the Minimum Wages Act, erected as per G.O.Ms. (2) No. 47, Labour and Employment, dated 01.08.2003. The Deputy Commissioner, on scrutiny of oral and documentary evidence, adopted a multiplier of Rs. 219.95 and awarded a sum of Rs. 4,34,071/- as compensation to the applicant under the head of loss of income and directed the second opposite party, being the insurer of the first opposite party's vehicle, to pay the compensation, within a period of thirty days, from the date of receipt of it's order, failing which the second opposite party was directed to pay the said sum together with interest at the rate of 12% per annum from the date of filing the petition till the date of payment of compensation.

11. Aggrieved by the award passed by the Deputy Commissioner of Labour, the second opposite party, has preferred the present appeal.

12. The learned counsel appearing for the appellant has contended that the

Commissioner failed to note that the claimant had issued a notice for producing own damage claim and he was examined as a witness on her side and the learned Commissioner though recorded the evidence of Durairaj, on the side of the claimant, has erred in describing him as R.W. 1 and the OD docket as Ex. R2, which ought to have been recorded as P.W. 2 and Ex. P7 respectively. It was contended that the Commissioner failed to note that the inquest report reveals that the deceased was a cine artist appearing in small roles and the inquest report establishes the occupation categorically.

13. It was contended that the Commissioner failed to note that the first opposite party has taken delivery of the dead body of Chandrasekar from the police authorities, since he was uncle of the deceased. It was contended that the Commissioner failed to note that the licence produced by the claimant reveals that the deceased was not authorised to drive any vehicle in professional driving capacity. It was contended that the Commissioner failed to note that the applicant and the first opposite party had colluded to fasten liability on the Insurance company and the first opposite party after scrutiny of indemnity for the damage caused to his vehicle, had deliberately fielded an incorrect counter statement and once the notice was served on him as seen in Ex. R1, had deliberately stayed away from the proceedings. Hence, it was prayed to set aside the award passed by the Deputy Commissioner of Labour.

14. The learned counsel for the applicant argued that the deceased had driven the car as a monthly paid driver under the first opposite party. While he was involved in the course of employment, the accident had taken place. The said car had been insured with the appellant herein. Further, the deceased was a qualified driver. In order to prove the same, the driving licence has been marked. The highly competent counsel further submits that the learned Deputy Commissioner of Labour, after considering the age, salary and occupation had assessed the compensation. The FIR marked clearly that the accident had happened in the course of employment of the deceased under the first opposite party.

15. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned order of the Deputy Commissioner of Labour, this Court does not find any discrepancy in the conclusions arrived at regarding employee-employer relationship and that the accident had occurred in the course of employment. The compensation awarded is appropriate as it has been assessed on the basis of age, income of the deceased. Hence, this Court is not inclined to entertain the above appeal.

16. Now, this Court permits the applicant to withdraw the entire compensation amount, with accrued interest, if any, lying in the credit of W.C. No. 419 of 2005, on the file of the Commissioner for Workmen's Compensation (DCL-II), Chennai, after filing a memo along with a copy of this Order and after identification of the applicant by the counsel. In the result, the appeal is dismissed and the Order dated 11.04.2007, made in W.C. No. 419 of 2005, on the file of the

Commissioner for Workmen's Compensation (DCL-II), Chennai, is confirmed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.