

(2013) 10 MAD CK 0027

In the Madras High Court

Case No : C.M.A. No. 3157 of 2009 and M.P. No. 1 of 2009

M/s. National Insurance Co. Ltd.

APPELLANT

Vs

V. Srinivasan and R. Kalidasan

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0027

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

Bench : Single Bench

Advocate : S. Vadivel, for the Appellant; Ma. Pa. Thangavel 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 03.07.2009, made in

W.C. No. 431 of 2007, on the file of the Commissioner for Workmen's Compensation Court/Deputy Commissioner of Labour, Salem. The short

facts of the case are as follows:-

The applicant has filed a claim petition in W.C. No. 431 of 2007, on the file of the Commissioner for Workmen's Compensation Court/Deputy

Commissioner of Labour, Salem, claiming compensation of a sum of Rs. 4,00,000/- from the opposite parties for the injuries sustained by him in

an accident arising out of and while doing his duty under the employment of the first opposite party.

2. It was submitted that on 10.04.2007, at about 09.00 a.m., the applicant was engaged as a Cleaner in the first opposite party's lorry bearing

registration No. TN31 U0207. When the said lorry, after it was loaded with sand

from the river-shore, was proceeding towards Fathima Nagar, for unloading it and while the applicant was sitting on top of the loaded sand on the lorry and when the lorry was proceeding on the river road, the applicant sustained an electrical shock due to contact with a live electric wire. As a result, the applicant sustained multiple grievous electrical burns on his neck and all over the body. Hence, he had filed a claim petition against the opposite parties, who were the employer and insurer of the lorry bearing registration No. TN31 U0207.

3. The second opposite party Insurance Company had filed a counter affidavit and refuted the claim. They did not admit that employer-employee relationship existed between the first opposite party and the applicant. They denied that the applicant had sustained injuries while he was working as a cleaner in the first opposite party's lorry during the course of his employment, the respondent further denied the mode of accident and nature of injuries sustained. The criminal case, which had been registered in this regard was closed as mistake of facts.

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

- i. Whether the applicant had met with an accident arising out of and during the course of his employment as a cleaner of the first opposite party?
- ii. If so, what is the age and monthly salary of the applicant at the time of accident?
- iii. What is the loss of earning capacity sustained by the applicant?
- iv. What is the quantum of compensation, which the applicant is entitled to get? and
- v. Who is liable to pay compensation among the opposite parties?

5. On the applicant's side, two witnesses were examined as P.Ws. 1 and 2 and seven documents were marked as Exs. P1 to P7 namely FIR, copy of R.C. Book, driving licence, insurance policy, wound certificate, medical discharge summaries and disability certificate. On the opposite parties' side, no witness was let in and no document was marked.

6. P.W. 1 had adduced evidence that on 10.04.2007, at about 09.00 a.m., when he was sitting on the top of the sand laden lorry bearing registration No. TN31 U0207, as a Cleaner, and when the said lorry was proceeding from Katthaloar River towards Fathima Nagar, for

unloading the sand and when it was nearing the river road, the applicant unexpectedly came into contact with a live electric wire, which was going across the road.

7. P.W. 1 had further adduced evidence that he had sustained injuries on his neck, back side of the body, right elbow, fore arm, left hand and burn injuries all over his body. He deposed further that he had been treated as an inpatient at K.M.C. Hospital, Trichy, for a period of 40 days and that at the time of accident, he was aged 40 years and was paid a sum of Rs. 5,000/- per month as salary. In support of his evidence, he had marked the above mentioned documents. He further deposed that the first opposite party was his employer and that the second opposite party was the insurer of the lorry.

8. P.W. 2 Doctor had adduced evidence that the applicant had sustained burn injuries on his neck, both his arms and abdomen and he certified that the disability sustained by the applicant was 65%. He further adduced evidence which is on similar lines to the evidence of P.W. 1.

9. On recording the evidence of the witnesses and on scrutinizing the documents marked by the applicant and on hearing the arguments advanced by the learned counsels on either side, the Deputy Commissioner of Labour had awarded a sum of Rs. 3,14,889/- as compensation to the applicant and directed the second opposite party Insurance Company to pay the said compensation amount within a period of 30 days from the date of receipt of their order failing which the Insurance Company has to pay the said sum together with simple interest at the rate of 12% per annum, from the date of filing the claim petition till the date of payment of compensation.

10. Aggrieved by the Award passed by the Deputy Commissioner of Labour, the second opposite party Insurance Company has preferred the present civil miscellaneous appeal.

11. The learned counsel appearing for the appellant has pointed out that the applicant who was a cleaner and as such he has to travel in the cabin of the lorry, if he was engaged as a Cleaner under the first opposite party. The applicant had not proved his case beyond doubts regarding employer-employee relationship and also not proved that he had sustained injuries during the course of his employment. His allegation was that he

had sustained electrical burns due to contact with live electric wire going across the road and as such the Electricity Department is also a necessary

party in the instant case. The applicant had not produced any salary certificate regarding his monthly income, which had been paid by his employer.

The Doctor had assessed the disability at 60%, which is on the higher side, since the claimant had sustained simple injuries.

12. The highly competent counsel appearing for the applicant has vehemently argued that regarding the accident, FIR had been registered and the

averments made in the FIR clearly reveals that the accident had occurred due to contact of the applicant with an electric live wire, while the

applicant was sitting on the sand laden lorry. Further, the lorry belongs to the first opposite party and the applicant was working as a cleaner under

him and he had been paid a monthly salary by the first opposite party. The said lorry had been insured with the applicant herein. Therefore, the

insurer is liable to pay compensation. The applicant, being a cleaner, was sitting on the loaded sand on the lorry, to notice lorry operations as well

as to safeguard the loaded sand. However, it was an admitted fact that he was travelling as an employee on the lorry at the time of accident and

therefore there is employer-employee relationship existing and the fact that the accident had occurred during the course of his employment had

been proved. The learned Deputy Commissioner of Labour had considered all the relevant facts and assessed the compensation to the applicant

and as such there is no lapse in the impugned award.

13. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the

impugned award, this Court does not find any discrepancy in the conclusions arrived at regarding employer-employee relationship and that the

accident took place in the course of employment of the applicant under the first opposite party. It is also seen that the said lorry had been insured

with the second opposite party Insurance Company. The learned Deputy Commissioner of Labour had also awarded compensation after adopting

appropriate multiplier and hence the impugned award is found fit to be executed.

14. As per the records, it is seen that the entire compensation amount has been deposited by the second opposite party, to the credit of W.C. No.

431 of 2007, on the file of the Commissioner for Workmen's Compensation

Court/Deputy Commissioner of Labour, Salem.

15. Now, it is open to the applicant to withdraw the entire compensation amount with accrued interest thereon, lying in the credit of W.C. No. 431

of 2007, on the file of the Commissioner for Workmen's Compensation Court/Deputy Commissioner of Labour, Salem, after filing a memo, along

with a copy of this Judgment and after identification of the applicant by his counsel. In the result, this civil miscellaneous appeal is dismissed and the

Order dated 03.07.2009, made in W.C. No. 431 of 2007, on the file of the Commissioner for Workmen's Compensation Court/Deputy

Commissioner of Labour, Salem, is confirmed. Consequently, connected miscellaneous petition is closed. No costs.