

(2013) 11 MAD CK 0096

In the Madras High Court

Case No : C.M.A. No. 1205 of 2006 and C.M.P. No. 4987 of 2006

National Insurance Company Ltd.

APPELLANT

Vs

A. Selvaraju and Marappan

RESPONDENT

Date of Decision : 06-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0096

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

Bench : Single Bench

Advocate : S. Arunkumar, for the Appellant; M. Aniruthan, 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 14.11.2005, made in W.C. No. 265 of 2002, on the file of the Commissioner for Workmen's Compensation, Salem. The short facts of the case are as follows:-

The applicant had filed a claim petition in W.C. No. 265 of 2002, on the file of the Commissioner for Workmen's Compensation, 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 07.04.2002, at about 09.00 a.m., he was engaged as a driver of the lorry bearing registration No. KA01 A5277. While he was coming from Punjab Towards Virudhunagar and when the lorry was nearing Paramathi Road in Namakkal, the applicant and the cleaner stopped the lorry and had tea. After that, the applicant had started the said lorry but it did not start due to battery failure. The same was informed to the owner of the lorry and he had instructed him to go and get another battery for the said lorry. Accordingly, the applicant and the cleaner of the lorry namely Balamurugan proceeded on a TVS50 Motorcycle and at that point of time, an unknown lorry, coming in the

opposite direction, dashed against him. As a result, he had sustained injuries. Hence, the applicant had filed the claim application against the opposite parties, who are the owner and insurer of the lorry bearing registration No. KA01 A5277.

3. The second opposite party Insurance Company had filed their counter affidavit and resisted the claim application. They had submitted that the applicant was not working as a driver of the lorry bearing registration No. KA01 A5277. Further, the said accident had not happened during the course of employment. Further, as per the averments of the claim application, the applicant and the lorry cleaner had both stationed the lorry at Namakkal and went for tea and after having tea, they had started the lorry, but it did not start due to the battery being down. This contention is not admissible, since at the time of parking of the lorry, the lorry was in a fit condition to move on the public road. Further, they had denied the averments regarding nature of injuries, mode of treatment and income etc.

4. On considering the averments of both sides, the Commissioner of Workmen's Compensation had framed five issues for consideration namely:

i. Whether the applicant was engaged as a driver with the first opposite party and whether the accident happened during the course of his employment?

ii. What is the age and income of the applicant?

iii. What is the quantum of loss to the applicant due to the accident?

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 six documents were marked as Exs. P1 to P6 namely FIR, wound certificate, copy of policy, driving licence, registration certificate, disability certificate. On the opposite parties' side, one V. Rajamanickam was examined as R.W. 1 and the insurance policy was marked as Ex. R1.

6. P.W. 1 had adduced evidence that on 07.04.2002, at about 09.00 a.m., when he and his cleaner had parked the lorry on Paramathi Road, Namakkal and went to have tea. After having tea, when he started the lorry bearing registration No. KA01 A5277, belonging to the first opposite party, it did not start due to failure of battery. Immediately, he had informed the employer, who had instructed him to go along with the cleaner on TVS50 motorcycle. Accordingly, when both were proceeding on a TVS50 motorcycle bearing registration No. TN28 J7179, on Paramathi Road, a lorry had come and dashed against them. Further, P.W. 1 had adduced evidence that he had sustained injuries and he had been hospitalized at R.K. Hospital, Namakkal, as an inpatient. He deposed further that the first opposite party is his employer and the applicant was employed as a driver of the lorry. At the time of accident, he was aged 25 years and he was paid a sum of Rs. 4,500/- as monthly salary.

7. P.W. 2 Doctor had adduced evidence that the applicant's right sole bones 3, 4 and 5 were fractured and the muscles were cut off and it had been sutured. He certified that the disability sustained by the applicant was 10%.

8. R.W. 1 had adduced evidence that the lorry had been insured with his Company and the accident had not occurred during the course of employment.

9. On considering the evidence of both parties and on scrutinizing the documents marked by them, the learned Commissioner for Workmen's Compensation, had awarded a sum of Rs. 40,399/- as compensation to the applicant and directed the second opposite party Insurance Company to deposit the said sum within thirty days from the date of its order. Failing which, the second opposite party Insurance Company was directed to pay the said sum together with interest at the rate of 9% per annum from the date of filing the claim till the date of payment of compensation.

10. Aggrieved by the award passed by the learned Commissioner for Workmen's Compensation, the second opposite party Insurance company has preferred the present civil miscellaneous appeal.

11. The learned counsel appearing for the appellant has contended in the appeal that the learned Commissioner for Workmen's Compensation erred in holding that the appellant herein alone is liable to pay the compensation. It is also contended that the learned Commissioner for Workmen's Compensation failed to note that the insured vehicle was not involved in any accident and the alleged injury was not in the course of employment as a driver of the lorry. Further, it is contended that the learned Commissioner for Workmen's Compensation failed to note that the vehicle involved in the accident was a TVS50 motorcycle and the first opposite party sustained injury due to the fault of unknown lorry even as per the belated FIR. It is contended further that learned Commissioner for Workmen's Compensation failed to note that the first respondent has not impleaded the owner and insurer of the TVS50 motorcycle inspite of specific defence. Further, it is contended that the learned Commissioner for Workmen's Compensation failed to note that no unassailable proof even with regard to the first respondent's employment as a driver under the second respondent herein was produced. Further, the learned Commissioner for Workmen's Compensation ought to have rejected the claim of the first respondent against the appellant and ought to have passed award against the second respondent herein as the claim is enforceable only against the employer.

12. The learned counsel appearing for the applicant has argued that the first opposite party is the employer of the applicant and on his instruction the applicant had proceeded on a TVS50 motorcycle in order to get a battery for the lorry. Accordingly, when he was proceeding towards a car battery shop, he had met with an accident on the way and sustained injuries. This accident had been caused during the course of employment of the applicant as a driver under the first opposite party. The said lorry had been insured with the second opposite

party and therefore the liability for paying compensation had been fastened on the insurance company. The quantum of compensation had been assessed on the basis of age, monthly salary and disability in an appropriate manner. As such, there is no short comings in the said 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 negligence, liability and quantum of compensation. On scrutiny of oral and documentary evidence, it is seen that the accident had occurred during the course of employment of the first respondent herein under the second respondent herein as a driver of the lorry and it is also seen that the second respondent's lorry had been insured with the appellant herein. Therefore, this Court is inclined to confirm the award passed by the learned Commissioner for Workmen's Compensation.

14. As per the records, it is seen that the entire compensation amount has been deposited by the appellant to the credit of W.C. No. 265 of 2002, on the file of the Commissioner for Workmen's Compensation, 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. 265 of 2002, on the file of the Commissioner for Workmen's Compensation, 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 14.11.2005, made in W.C. No. 265 of 2002, on the file of the Commissioner for Workmen's Compensation, Salem, is confirmed. Consequently, connected civil miscellaneous petition is closed. No costs.