
(2015) 03 MAD CK 0273

In the Madras High Court

Case No : CMA(MD) No. 601 of 2006 and CMP(MD) No. 3436 of 2006

New India Assurance Co. Ltd.

APPELLANT

Vs

P. Pandi and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 2(g), 4(1)(c)(ii)

Citation : (2015) 03 MAD CK 0273

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : G. Prabhu Rajadurai, for the Appellant; C.K.M. Appaji, Advocates for the Respondent

Final Decision : Dismissed

Judgement

D. Hari Paranthaman, J.—The 1st respondent was working as a cleaner in the lorry bearing registration No. TN-57-J-4999 owned by the 2nd respondent herein insured with the appellant insurance company. On 27.03.2005, the lorry was loaded with vegetables at Ottachathiram Gandhi Market and proceeded towards Kerala. While so, about 11.15 P.M., when the lorry was crossing Nanganji river bridge on Tharapuram-Ottanchathiram road, the driver drove the lorry in a rash and negligent manner, due to which, the lorry got capsized and hit against a tree on the left side of the road. The 1st respondent received grievous injuries and he sustained fracture of right shoulder, left thigh and left elbow and all his fingers got frushed and his upper jaw torn. There was also an injury in the left eye, overhead, backside of the head and he lost consciousness. He was taken to CF Hospital, then he was taken to Madurai Meenakshi Mission Hospital. An operation was performed. He was inpatient from 27.03.2005 to 22.04.2005.

2. According to the 1st respondent/claimant, he could not again do the work of cleaner and he could not even stand without the help of another person. Hence, he claimed that he suffered 100% disablement. He filed W.C. No. 109 of 2005 on the file of Commissioner for Workmen Compensation, (Deputy Commissioner of

Labour), Dindigul, claiming compensation of Rs. 7,00,000/- for permanent total disablement.

3. Before the Deputy Commissioner of Labour, the claimant examined himself as a witness and examined the Doctor to prove the disability. Exs. P1 to P8 were marked on the side of the claimant. No oral and documentary evidence was let in on the side of the insurance company.

4. The Doctor who was examined on the side of the claimant, deposed that due to the grievous injuries, the claimant could not do the work of cleaner which he did prior to the accident. Based on the same, the Deputy Commissioner of Labour took the loss of earning capacity suffered by the claimant at 100% and awarded compensation of Rs. 4,42,345/-. Questioning the same, the appellant insurance company filed this appeal raising the following substantial questions of law:--

"1) Whether it is correct in law to estimate the loss of earning power at 100% without any reason, especially when the doctor certified the disability at 60%?

2) Whether the Commissioner in law in assessing the compensation in the present case has followed strictly provisions of Section 4(1)(c)(ii) of the Workmen Compensation Act, 1923 as the injury suffered by the workman is not a scheduled injury?"

5. Heard both sides.

6. The learned counsel for the appellant has submitted that when the doctor gave disability certificate certifying that the claimant suffered 60% permanent disability, the Deputy Commissioner of Labour was not correct in fixing the disability at 100%. The learned counsel has heavily relied on Section 4(1)(c)(ii) read with Explanation-II of the Workmen Compensation Act. In support of his contention, he has also relied on the following judgments:--

"1) Singadurai Vs. S. Chandrasekar and United India Insurance Co. Ltd. .

2) National Insurance Co. Ltd., v. E. Chandru, reported in 2012 (2) TN MAC 12.

3) The Oriental Insurance Co. Ltd., v. K.R. Ramesh @ Kulanthai, reported in 2012 (2) TN MAC 69(DB)."

7. On the other hand, the learned counsel for the 1st respondent/claimant has taken me through the evidence of the doctor and also the provisions of the Workmen Compensation Act, more particularly, the definition of the word "total disablement" as defined under Section 2(1) of the Act.

8. I have considered the submissions made by either side.

9. As per Section 2(g), if a workman received injury specified in Part-II of Schedule-I, then he is deemed to have suffered permanent partial disablement. Part-II of Schedule-I contains 48 items of injuries and the percentage of loss of earning capacity is noted against each item. In the case of those injuries, no

examination of Doctor is required. For instance, the first item is "Amputation through shoulder joint" and the percentage of loss of earning capacity for the said injury is 90%. If a workman suffered amputation through shoulder joint, the percentage of loss of earning capacity should be taken as 90% and no Doctor need be examined. Likewise, item 27 is relating to loss of whole fingers of right or left hand. If a workman suffered loss of whole fingers of right or left hand, the percentage of loss of earning capacity should be fixed at 14%. So also, for the loss of two phalanges, the loss of earning capacity should be fixed at 11% as per item 28 of Part II to Schedule I of the Workmen's Compensation Act.

10. It is necessary to extract Section 2(1) of the Workmen Compensation Act:--

"(1) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement;

Provided that permanent total disablement shall be deemed to result from every injury specified in Part 1 of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent, or more;]"

11. It is also necessary to extract Section 2(g) of the Workmen Compensation Act:--

"partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified 2[in Part II of Schedule I] shall be deemed to result in permanent partial disablement."

12. In this case, the injuries sustained by the 1st respondent are not scheduled injuries. It is true that the doctor certified that the claimant suffered 60% disability. But both the 1st respondent/workman and the doctor deposed before the Deputy Commissioner of Labour that the workman could not do work of cleaner due to the injuries suffered in the accident even after the treatment.

13. According to the learned counsel for the appellant, the injuries sustained by the claimant come under Serial No. 4 of Part-II of Schedule-I of the Workmen Compensation Act. It is relevant to extract Serial No. 4:--

14. If it was only the schedule injury that comes under Serial No. 4, then there is no difficulty. No effort was taken by the appellant to examine any doctor to disprove the version of the claimant and the doctor who was examined on the side of the claimant. In these circumstances, the Deputy Commissioner of Labour categorically came to the conclusion based on the evidence and also upon physical examination of the claimant that the 1st respondent/claimant could not

do the work of the cleaner which he did earlier.

15. The definition of total disablement under Section 2(1) of the Workmen Compensation Act, makes it clear that if a person is not able to do the work which he was doing earlier, then it should be taken as permanent total disablement. Proviso to Section 2(1) is not necessary as far as this case is concerned. It is not the case of the appellant that the 1st respondent/claimant could do the work of cleaner, but they still rely on the disability certificate issued by the doctor and contend that the Deputy Commissioner of Labour could not fix more than the percentage of disability certified by the doctor. In this regard, the evidence of doctor is extracted hereunder:--

16. Therefore, I am of the view that the Deputy Commissioner of Labour cannot be faulted for fixing the disability at 100%. At the time of admission of this appeal, this Court passed the following order on 25.04.2006.

"Heard the learned counsel appearing for the appellant who would represent that the substantial questions of law involved in this appeal is in the case of an injury not specified in Schedule I as per Section 4(1)(c)(ii) of Workmen's Compensation Act. The learned Deputy Commissioner of Labour, Dindigul has adopted correct factor 211.79 for the injured aged 28 but multiplied the same by 100/100 whereas the Doctor has fixed the disability as 60%. The learned counsel in support of his contention relied the decision reported in Singadurai v. Chandrasekaran and others (2004(2) TNMAC 210). The facts of the above dictum squarely applies to the present facts of the case.

Admit. Notice in three weeks."

17. Reliance was placed on Section 4(1)(c)(ii) of the Act and the judgment in Singadurai Vs. S. Chandrasekar and United India Insurance Co. Ltd. .

18. In my considered view, Section 4(1)(c)(ii) of the Workmen Compensation Act is not attracted in this case. Section 4(1)(c)(ii) would attract only, in a case where the workman suffers permanent partial disablement. In this case, the claim of the workman is he suffered permanent total disablement. It has to be seen as to whether the workman established that he suffered permanent total disablement. Therefore, Section 4(1)(c)(ii) of the Workmen Compensation Act is not applicable to the facts of this case. Hence, the judgment in Singadurai Vs. S. Chandrasekar and United India Insurance Co. Ltd. relied on by the learned counsel for the appellant is of no use to this case. In that case, the Division Bench did not consider Section 2(1) of the Workmen Compensation Act that defines what is permanent total disablement. The aforesaid decision of this Court is simply confirming the order of the Deputy Commissioner of Labour, wherein, the Commissioner fixed the disability at 80% based on the certificate of the doctor. Therefore, in my view, the aforesaid judgment cannot be relied on by the appellant as Section 2(1) was not considered in the said judgment particularly when the Commissioner in this case recorded a finding that is covered by Section 2(1).

19. Likewise, in the another judgment relied on by the learned counsel for the appellant in National Insurance Co. Ltd., v. E. Chandru, reported in 2012 (2) TN MAC 12, this Court considered the effect of Section 4(1)(c)(ii) of the Workmen Compensation Act. It deals with non scheduled injury. Hence, this Court in the said judgment did not advert to Section 2(1) of the Act and therefore, it is not applicable to the facts of this case.

20. The other judgment relied on by the learned counsel for the appellant in The Branch Manager, The Oriental Insurance Co. Ltd., v. K.R. Ramesh @ Kulanthai, reported in 2012 (2) TN MAC 69(DB) does not arise under the Workmen Compensation Act. Hence, the said judgment is also of no use.

21. No judgment is produced before this Court by the appellant under Section 2(1) of the Act, when there is a clear finding of the Deputy Commissioner of Labour under Section 2(1) of the Act.

22. Here, the only issue is as to whether the workman established that he could not do the work which he performed prior to the accident. If he is able to establish, he could claim compensation for total disablement particularly, if he could not do the work even after the treatment was over and in this case, there is an abundant evidence that the claimant could not do the work of cleaner and even he could not stand without the help of others. Almost, he becomes a vegetable.

23. Hence, I do not find any infirmity on the part of the Deputy Commissioner of Labour in fixing the permanent disability sustained by the claimant at 100%. Accordingly, the substantial question of law is answered against the appellant and the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, CMP(MD) No. 3436 of 2006 is closed. The claimant is permitted to withdraw the amount deposited.