

(2001) 10 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No. 22434 of 1993 and W.M.P. No. 35134 of 1993

P. Mariappan

APPELLANT

Vs

The Deputy Commissioner for Workmen Compensation,
Palayamkottai and Another

RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Workmens Compensation Act, 1923 — Section 30

Citation : (2003) ACJ 326 : (2002) 92 FLR 95 : (2001) 3 MLJ 647

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : P. Senthur Pandian, for the Appellant; S.V. Duraisolaientalai,
Government Advocate and C.D. Johnson, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The writ petition is directed against the award of the first respondent -Deputy Commissioner for Workmen

Compensation, Palayamkottai in W.C. No. 83 of 1991 dated 21.5.1992, wherein the authority has passed an award for Rs. 34,445 as

compensation in favour of the workman second respondent herein.

2. The petitioner is the owner of a cinema theatre, which was under construction,- The second respondent herein - workman, employed by the

petitioner for construction of the cinema theatre, sustained injuries during the course of his employment on 22.2.1989. According to the second

respondent, he had taken treatment nearly for 2 1/2 months i.e., from 22.2.1989 to 3.4.1989. He was aged 50 years at the time of accident. He

was earning Rs. 1,800,00 per month. For the injuries sustained in the course of employment, the second respondent made an application in W.C.

No. 83 of 1991 before the Deputy Commissioner for Workman Compensation, Palayamkottai first respondent herein, claiming compensation amount of Rs. 78,235.00.

3. The said application was resisted by the respondent therein - petitioner herein.

4. When the matter was called on 26.3.1992, 1.4.1992, 20.4.1992 and 4.5.1992, the respondent therein did not appear before the said Authority and failed to put forth his case.

5. On the other hand, before the first respondent, the second respondent - workman was examined as W.W.I and produced wound certificate, X-ray, medical certificate, First Information Report and final report by the police as Exs.P.1 to P.4 respectively.

6. In the light of the evidence let in by the workman and in the absence of any other contra evidence on the side of the employer, after accepting the case of the workman. Deputy Commissioner passed an award for Rs. 34,445.00 directed the employer to deposit the said amount within 90 days from the date of receipt of the said order. This is clear from the order of the first respondent dated 21.5.1992, Against the said order, the employer preferred the present writ petition.

7. Heard the learned counsel for the petitioner as well as for the respondents.

8. The only point for consideration in this writ petition is, whether the writ petition against the award of the Deputy Commissioner, Workman Compensation is maintainable, more particularly in view of Section 30 of the Workmen's Compensation Act, 1923?

9. I have already referred to the fact that, though the petitioner - employer filed a counter statement in the claim made by the workman in W.C.

No. 83 of 1991, did not contest the same at the subsequent dates. Based on the workmans oral and documentary evidence, the Authority has passed the impugned award granting compensation. Section 30 of the Workmen's Compensation Act (in short "the Act") enables the aggrieved person to file an appeal to this Court. It is relevant to note Section 30 of the Act.

30. Appeals (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely : -

(a) an order as awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a

claim in full or in part for a lump sum.

(a) an order awarding interest or penalty u/s 4A;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person

alleging himself to be such dependent;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to

conditions-Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an

order other than an order such as is referred to in Clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees;

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the

order of the Commissioner gives effect to an agreement come to by the parties;

Provided further that no appeal by an employer under Clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the

Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against."")

10. As per first proviso, unless a substantial question of law is involved, no appeal can be entertained by this Court. Likewise-, as per third

proviso, in the case of an appeal by an employer, unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the

effect that the appellant has deposited the amount payable under the order appealed against, the appeal is liable to be rejected. It cannot be

disputed that the order under challenge in this writ petition is an award passed by the Deputy Commissioner in terms of Section 30(1) of the Act. If

that is so, the proper course for the petitioner employee: is to prefer an appeal to this Court u/s 30 of the Act, after depositing the entire amount

awarded by the Commissioner and enclosing a certificate along with the memorandum of grounds of appeal, I have already referred to that, unless

a substantial question of law is involved in the appeal the same cannot, be entertained by this Court.

11. Further, as per Sub-section (2) of Section 30 of the Act, the period of limitation for an appeal is 60 days. As per Sub-section (3), Section 5 of the limitation Act is applicable to the appeals under this section. In the light of the specific provision for filing an appeal before this Court, by complying certain conditions therein, the petitioner/employer, in order to avoid compulsory deposit and the period of limitation, has preferred the above writ petition under Article 226 of the Constitution of India and obtained stay of all further proceedings as early as on 23.12.1993. In view of the specific provision, namely Section 30 of the Act and the conditions therein, I hold that the present writ petition under Article 226 of the Constitution of India to quash the impugned award is not maintainable, on this ground, the writ petition is dismissed with the cost of Rs. 2,000.00, payable to the second respondent - workman. Consequently, connected WMP, is also dismissed.