
(2013) 02 MAD CK 0189
In the Madras High Court
Case No : C.M.A. (MD) No. 894 of 2002

Sevugarathinam alias Rathinam

APPELLANT

Vs

B. Meenakshi Sundaram and Another

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Citation : (2013) 3 LLJ 194

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

Bench : Single Bench

Advocate : K. Mahendran, for the Appellant; C. Jawahar Ravindran, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The appellant/applicant has preferred the present appeal in C.M.A. No. 894 of 2002, against the order passed in W.C. No. 224 of 1993, on the file of the Commissioner for Workmen's Compensation, Madurai. The Applicant has filed the claim in W.C. No. 224 of 1993, claiming compensation of a sum of Rs. 1,48,253/- from the respondents for the injuries sustained by him in a Motor Vehicle Accident arising out of and while doing his duty in the course of employment under the 1st respondent. It was submitted that while the petitioner was employed as a cleaner in the 1st respondent's lorry bearing registration No. TDI-3604. On 06.06.1990, when he was working as cleaner, he met with an accident at Veppur, due to while the applicant's right leg was amputated and his left leg was fractured. It was submitted that the applicant had sustained 100% disability due to the accident. At the time of accident, the applicant was aged 28 years and getting monthly salary of Rs. 1,000/- plus batta of Rs, 400/-. Hence, the applicant has filed the claim against the 1st and 2nd respondents, who are the owner and insurer of the lorry bearing registration No. TDI-3604.

2. The 1st respondent, in his counter has submitted that the applicant was working as a cleaner of the 1st respondent's lorry bearing registration No. TDI-3604. It was also admitted that on 6.6.1990, he had sustained grievous

injuries in an accident that took place at Veppur. It was submitted that as the 1st respondent's lorry had been insured with the 2nd respondent at the time of accident, only the 2nd respondent is liable to pay compensation.

3. The 2nd respondent in his counter has denied in to all the averments and allegations contained in the claim.

4. The Commissioner for Workmen's Compensation had framed four issues for consideration namely: (1) Whether the appellant is a workman under the act?; (2) Whether the accident arose out of and in the course of his employment?; (3) What, if any, is the quantum of compensation payable to the applicant?; (4) Who is liable to pay compensation?.

5. On the applicant's side, two witnesses were examined and ten documents were marked as Exhibits P-1 to P-10 namely: Exhibit P-1-F.I.R; Exhibit P-2-charge sheet; Exhibit P-3-Motor Vehicle Inspector's Report; Exhibit P-4-accident register; Exhibit P-5-wound certificate; Exhibits P-6 and P-7-Chenthil nursing home case sheet; Exhibit P-8-School Transfer Certificate; Exhibit P-9-X rays (4 in series); Exhibit P- 10-Disability certificate. On the respondent's side, one witness was examined and one document was marked as Exhibit R-1, payment vouchers.

6. P.W.1, the applicant had adduced evidence that he was working under the employment of the 1st respondent as a cleaner and that on 6.6.1990, he had sustained injuries in the accident arising out of and in the course of doing his duty under the employment of the 1st respondent. In support of his evidence, he had marked Exhibits P-1 to P-10. The Commissioner on observing from the counter in his lorry and on considering the evidence of P.W. 1, held that the applicant is a workman and that he met with an accident on 6.6.1990, arising out of and in the course of employment under the 1st respondent.

7. The Commissioner on scrutiny of Exhibit P-7-School Transfer Certificate observed that the age of the applicant was 30 years at the time of accident i.e., 6.6.1990.

8. R.W.2, the 1st respondent, has deposed in his evidence that he had paid Rs. 1,000/- as monthly salary to the applicant. In his cross examination, he had admitted that the applicant had joined in May 1989 and at that time he was paid Rs. 800/- per month. He had also admitted that an increment of Rs. 200/- had been given to the applicant for every succeeding year. In support of his evidence, he had filed the payment vouchers as Exhibit R-1, Consisting of 5 vouchers. The Commissioner observed that all the 5 vouchers have been written in the same pen and by the same person in all vouchers and that the applicant has also signed in one and the same ink. Further, the commissioner observed that the 1st respondent had made payment of Rs. 1,000/-for the month of April and May. The Commissioner observed from the evidence of R.W. 1, that he had stated that the applicant was paid only Rs. 800/- for the month of May 1989. Hence, the Commissioner opined that Exhibit R-1 (Series) have been created by the 1st respondent and the applicant for the purpose of this case and hence held that

Exhibit R-1 cannot be taken as acceptable evidence. The Commissioner held that the notional income of the applicant could only be taken as Rs. 645/- per month as per the minimum wages fixed by the Government as per its order in G.O. Ms. No. 1811, Labour and Employment Department, dated 23.9.1985.

9. P.W.2, Dr. Devadoss, adduced evidence that due to the injuries sustained by the applicant, the left leg of the applicant had been amputated and there was fracture in the right leg ankle. He has also deposed that he cannot do the work of cleaner. In his cross examination, he had rejected the suggestion that the applicant can resume his earlier work, if an artificial limb is fixed. The Commissioner, on opining that the applicant cannot resume his duty as a cleaner because of amputation of his leg held that the loss of earning capacity of applicant was 100%. The Commissioner, on scrutiny of oral and documentary evidence awarded a compensation of Rs. 67,126/- (Rs. $645.50 \times 50 / 100 \times 207.98$) under the head of loss of income due to disability; and directed the 2nd respondent, being the insurer of the 1st respondent's lorry, to pay the said sum within 30 days from the date of its order failing which an interest at 6% per annum will be charged on the award amount from the date of accident till date of deposit.

10. Not being satisfied by the award passed by the Commissioner for Workmen's Compensation, the applicant has preferred the above appeal. The learned counsel for the applicant has contended in his appeal that the Court below erred in rejecting the evidence of R.W.1 and P.W. 1 in so far as the monthly income of the applicant was concerned. It was also contended that the Court below erred in holding that all the 5 vouchers have been written in the same and by the same person and that the 1st respondent had filled up all the vouchers at one stretch. It was also contended that the Court below erred in holding that the applicant and 1st respondent have created Exhibit R-1 (Series) for the purpose of the case. It was contended that the Court below ought to have accepted the exhibit marked as R1 and awarded the full amount of compensation.

11. The learned counsel for the Insurance Company, submits that as per G.O. Ms. No. 1811, Labour and Employment Department, dated 23.9.1985, the minimum wages fixed for the category of cleaner is pay of Rs. 353.50/- and D.A. Rs. 292/-. In total, the pay has been fixed as Rs. 645.50/-. On the basis of this figure, the Tribunal had adopted necessary formula and had awarded a sum of Rs. 67,176/- as compensation. This claimant had also claimed compensation under the act. As such, the procedure had been strictly adhered to for assessment of compensation.

12. Per contra, the learned counsel for the claimant submits that the owner of the vehicle had filed counter statement and he had admitted the accident and nature of injuries. Further, he had admitted that the vehicle was duly insured with the 2nd respondent, namely Oriental Insurance Company. The 1st respondent had not disputed the salary and batta of the applicant/cleaner. If the 1st respondent paid a sum of Rs. 1,000/- as salary and batta of a sum of Rs.

400/-, this is not against the G.O. Ms. No. 1811, dated 23.9.1985, Labour and Employment Department. The Labour and Employment Department had fixed the minimum wages of Rs. 645.50/-. But, the Department had not fixed the maximum wages to be paid to the applicant category. Therefore, the claimant is entitled to get adequate compensation, since the leg has been amputated.

13. On considering the facts and circumstances of the case and arguments advanced by the learned counsels and on perusing the impugned order of the learned Commissioner for Workmen Compensation, this Court is of the view that: (1) The G.O. Ms. No. 1811, dated 23.09.1985, Labour and Employment Department, had fixed the minimum wages as Rs. 645.50/- to the cleaner category but the Government Order is silent regarding maximum wages payable to such category; (2) The owner of the vehicle i.e., the 1st respondent in the instant case had not denied the salary of the applicant and had not denied the nature of injuries and accident and had also admitted that the vehicle was insured with the Insurance Company; (3) The claimants left leg had been amputated and he had also sustained fracture in right leg and operation has been conducted. Therefore, this Court allows the appeal and directs the 2nd respondent/Oriental Insurance Company to pay a sum of Rs. 67,126/- as additional compensation within a period of four weeks by way of deposit before the Commissioner for Workmen's Compensation, Madurai, in W.C. No. 224 of 1993.

14. After such deposit has been made, it is open to the appellant to withdraw the entire additional compensation amount as per this Court order, after filing a memo along with a copy of this order and after identification of applicant by his counsel, forthwith. In the result, the above appeal is allowed. Consequently, the award and decree passed in W.C. No. 224 of 1993, on the file of Commissioner for Workmen's Compensation, Madurai, dated 4.4.1994, is set aside. No costs.