

(2015) 02 MAD CK 0028

In the Madras High Court

Case No : C.M.A.(MD)No.120 of 2013 and M.P(MD)No.1 of 2013

The Divisional Manager, M/s. Bajaj Allianz General Insurance
Company Ltd.

APPELLANT

Vs

P. Ravi

RESPONDENT

Date of Decision : 17-02-2015

Acts Referred:

Citation : (2016) 1 TNMAC 394

Hon'ble Judges : Mr. D. Hariparanthaman, J.

Bench : Single Bench

Advocate : Mr. S. Srinivasa Raghavan, Advocate, for the Appellant; Mr. A. Theethar, Advocate, for the Respondent No. 1; Mr. C.M. Arumugam, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Mr. D. Hariparanthaman, J.—The appellant is the insurance company. The Tractor and Trailer of the 2nd respondent was insured with the appellant insurance company. On 08.02.2008, while the 1st respondent was working under the 2nd respondent in the said Tractor and Trailer and handling hay, an accident took place, in which, he received severe injuries all over the body which resulted in fracture of tibia and fibula in his left leg. He sustained 50% disability. The accident was reported to the Manamadurai Police Station and a receipt was issued by the said Police Station and the same is marked as Ex.A1. There is an insurance policy covering the vehicle and the same is marked as Ex.A3. As per Ex.A3, if the 1st respondent was employed under the 2nd respondent in the Tractor and Trailer, the 1st respondent is entitled to compensation. The 1st respondent filed W.C.No.312/2008 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai, claiming compensation for the injuries and for the disability suffered due to the accident. The appellant contested the claim contending that the 1st respondent was not employed with the 2nd respondent and there was a delay in reporting the

accident to the police station.

2. Before the Deputy Commissioner of Labour, the 1st respondent/workman, examined himself as PW1. The Doctor who examined the claimant was examined as PW2 and Exs.A1 to A6 were marked on the side of the claimant. On the side of the appellant, the official of the appellant insurance company was examined as RW1 and Exs.R1 to R5 were marked.

3. Ex.A5 is the disability certificate. The 1st respondent/workman was admitted in Madurai Meenakshi Mission Hospital and the discharge summary issued by the said hospital is marked as Ex.A4. Ex.A1 is the receipt relating to the complaint given about the accident to the police station. The 2nd respondent/employer remained ex parte before the Deputy Commissioner of Labour. After considering the materials on record and hearing the arguments, the Deputy Commissioner of Labour, Madurai, passed an award dated 27.09.2012 granting compensation of Rs.2,24,648/-, on the ground that the 1st respondent suffered 50% disability in the accident that took place, while he was working under the 2nd respondent. The said order is challenged by filing this appeal.

4. Heard both sides.

5. Learned counsel for the appellant has vehemently contended that the Deputy Commissioner of Labour committed an error in coming to the conclusion that the 1st respondent was employed by the 2nd respondent in the Tractor and Trailer. According to the learned counsel, the accident did not arise out of and in the course of employment. He has submitted that while the accident took place on 08.02.2008, the matter was reported to the police belatedly on 02.03.2008. Hence, he has doubted the very accident itself.

6. On the other hand, learned counsel for the 1st respondent has submitted that the Deputy Commissioner of Labour has recorded a finding of fact based on the evidence on record and the same normally could not be interfered in the appeal, under Section 30 of the Workmen Compensation Act. He has further submitted that PW1 categorically stated about his employment with the 2nd respondent and the same was not assailed successfully by the appellant. He has taken me through the evidence of RW1 and submitted that the evidence of RW1 could not be relied on by the appellant, to contend that the 1st respondent was not employed by the 2nd respondent. Ex.A1 which is a receipt given by the Sub Inspector of Police, SIPCOT Police Station, Manamadurai, about the accident and also Ex.A4 which is a Discharge Summary issued by Madurai Meenakshi Mission Hospital, would go to show that there was an accident took place during the course of employment as deposed by PW1/workman and there is no reason to disbelieve the same.

7. I have considered the submissions made on either side and perused the original records.

8. The receipt given by the Sub Inspector of Police, SIPCOT Police Station,

Manamadurai, is marked as Ex.A1 and the same is extracted hereunder:-

fle;j 8.2.2008-k Bjjp Rkhh; 16.00 kzpastpy; kDjhh; utp 35/08 j/bg. gpr;ir, fhl;L cilFsk;, khdhkJiu vd;gth; tprrha Btiy epkpj;jk; TN 63 H 2646 vd;w ouhf;lh; TN 63 H 2630 vd;w obua;yh; nitfsy; Bky bfhd;df;Fsk; rhj;jurd; Bfhl;il bry;Yk; tHpapy; bjw;Fg[wk; cs;s K.nuh\$hA;fk; vd;gthpd; taypy; itf;Bfhy; Vw;wp nUf;F fapW fl;L bghGJ fapW mUe;J vq;rpD; Bky; tpGe;J mjd; gpwF fPBH tpGe;jjpdhy; kDjhh; utpf;F nIj fhy; kw;Wk; nLg;gpy; gyj;j fhak; Vw;l;Ls;sJ nJ bjhlh;ghf kJiu kPdhI;rpapy; tprhuiz bra;J gjpt[bra;ag;gl;Ls;sJ. BkBy brhd;d rk;gtA;fs; tprhuizapy; cz;ikbad njd; Kyk; rhd;W bra;fpBwd;. nJ bjhlh;ghf kD vz; 28/08 Kyk; tprhuiz bra;fpBwd;.

9.3.2008."

9. The Discharge Summary issued by Meenakshi Mission Hospital, Madurai, is marked as Ex.A4. As per the Ex.A4, the 1st respondent was admitted on 09.02.2008 and was discharged on 22.02.2008. Ex.A4 shows that on local examination of the claimant, the following were found:-

Left Ankle:

- About 3cm X 1cm in the lacerated wound medical aspect of Ankle.
- Swelling/ deformity/ tenderness/ Abnormal mobility in the lower 4th of leg region.
- Swelling/ tenderness + in the ankle joint.
- Ankle movements painful and restricted.
- No distal neuro vascular deficit."

Ex.P4-Discharge Summary also reveals that at the time of discharge, the claimant was given the following advice.

Walking with non weight bearing of left lower limb.

Mobilization exercise for left knee and toes.

T.ULTRACET

SOS

T.CCM

10D

X

30 DAYS

C.BECOSULES

10D

X

30 DAYS

10. It is not the case of the appellant insurance company, the Tractor involved in the accident was not insured with them and therefore they are not liable. On the other hand, it is their case that the 1st respondent was not employed by the 2nd respondent and the accident did not arise out of and in the course of employment, but the same was not able to be established by them. On the other hand, Ex.A1 read with Ex.A4 as well as the evidence of PW1 make it clear that the 1st respondent was employed under the 2nd respondent in the Tractor and Trailer and the accident arose out of and in the course of employment on 08.02.2008, in which, he also received severe injuries and he was admitted as inpatient in Madurai Meenakshi Mission Hospital between 09.02.2008 and 22.02.2008. Hence, the Deputy Commissioner of Labour has correctly rejected the claim of the appellant and held that the 1st respondent was employed by the 2nd respondent and the accident arose out of and in the course of employment on 08.02.2008.

11. As rightly contended by the learned counsel for the 1st respondent, the finding of fact recorded by the Deputy Commissioner of Labour cannot be termed as perverse and no question of law is involved.

12. In the result, the Civil Miscellaneous Appeal fails and the same is dismissed. In view of the dismissal of the appeal, the 1st respondent/claimant is permitted to withdraw the entire award amount lying in the credit of the claim petition. No costs.