

(2015) 02 MAD CK 0001

In the Madras High Court

Case No : C.M.A(MD)No.1656 of 2013 and M.P.(MD)Nos.1 of 2013 and 1 of 2014

The Divisional Manager, M/s. National Insurance Company
Limited

APPELLANT

Vs

G. Panneer

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2016) 1 TNMAC 381

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

Bench : Single Bench

Advocate : Mr. D. Sivaraman, Advocate, for the Appellant; Mr. M. Prakash,
Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. D. Hariparanthaman, J.—By consent of both parties, the appeal itself is taken up for disposal, when the application to withdraw 50% of the award amount filed by the injured workman was listed up for hearing.

2. Heard both sides.

3. Learned counsel for the appellant has vehemently contended that it is the case wherein, the 1st respondent was not employed under the 2nd respondent, who is the Transport Operator and owned M/s. Raj Roadways. The learned counsel has admitted that the 2nd respondent took an insurance policy, covering both the driver and Conductor, besides one employee. Since the 1st respondent herein was not employed by the 2nd respondent, the 1st respondent could not claim any compensation against the insurer, under the Workmen's Compensation Act.

4. Learned counsel for the appellant has heavily relied on the counter statement filed by the 2nd respondent/employer, denying the very employment of the 1st respondent. Since the 2nd respondent denied the employment, it was incumbent on the part of the 1st respondent, to prove the employment and he failed to discharge the said burden and hence, the Commissioner for Workman

Compensation has committed an error in passing the impugned award, directing the appellant Insurance Company to pay compensation of Rs.1,32,046/- for the injuries sustained by the 1st respondent/workman in his eyes, during the repair work of the bus owned by the 2nd respondent was carried out at the workshop.

5. On the other hand, learned counsel appearing for the 1st respondent/workman has submitted that it is true that the 2nd respondent denied employment, in order to avoid payment of compensation, but the same was established by the 1st respondent, by producing both oral and documentary evidence. He has also submitted that the appellant insurance company did not let in any evidence to disprove the employment. He has submitted that in cases, where the insurance company doubts the employment of a workman, they would appoint an investigating officer and in this case, no investigating officer was appointed and absolutely, there was no evidence, disputing the evidence of the 1st respondent/workman. He has submitted that the 2nd respondent/employer did not turn up to give evidence before the Commissioner.

6. Learned counsel for the 1st respondent has also heavily relied on Ex.P1-Trip Sheet dated 16.02.2005 of Raj Roadways that was maintained under Rule 275 of Madras Motor Vehicle Rules 1940 for the Stage Carriage operated between Devakottai and Thiruvottriyur. In the said Trip Sheet, the name of the 1st respondent is mentioned as the workman employed as Conductor on 16.02.2005. The driver in the said Trip Sheet is Thiru. Balasubramani. The 1st respondent deposed about his employment with the 2nd respondent/employer and he has relied on his cross-examination by the appellant.

7. Furthermore, the learned counsel for the 1st respondent submitted that the driver Thiru. Balasubramani, also gave evidence about the employment of the 1st respondent as Conductor on 16.02.2005. He has also relied on the notice dated 15.07.2005 sent by the advocate for the 1st respondent before the Commissioner for Workmen Compensation to the 2nd respondent through RPAD about the accident and the injury suffered by the 1st respondent in the accident. In the said notice, the details of the accident and the treatment taken by the 1st respondent were detailed. The receipt for the notice having been sent through RPAD and the acknowledgment of the 2nd respondent were also produced before the Commissioner and the same were marked as Exs.P12 and P13.

8. According to the learned counsel for the 1st respondent, the 1st respondent has clearly established that he was employed under the 2nd respondent. Hence, it is purely a question of fact and no appeal could be entertained under Section 30 of the Workmen's Compensation Act on the question of fact. It is not a case of perversity or the case of no evidence. In view of substantial evidence available in favour of the plea that the 1st respondent was employed by the 2nd respondent, he submitted that the appeal deserves to be dismissed.

9. I have considered the submissions made on either side and I have also gone through the original records.

10. As rightly contended by the learned counsel for the 1st respondent, Ex.P1 is the Trip Sheet of the 2nd respondent Raj Roadways, which was maintained under Rule 275 of the Madras Motor Vehicle Rules, 1940, for the Stage Carrier TN-63-W-8912. The registration number of the bus namely, TN-63-W-8912 is found in Ex.P1-Trip Sheet and it is well settled that document would not speak a lie. Ex.P1 also relates to 16.02.2005. On 16.02.2005, the said bus was operated between Devakottai and Thiruvottriyur and one Balasubramani was the driver, as per Ex.P1-Trip Sheet.

11. As rightly contended by the learned counsel for the 1st respondent, Thiru.Balasubramani was examined as PW4. I have gone through the evidence of PW4. He has categorically stated about the employment of the 1st respondent along with him on 16.02.2005 as Conductor and also categorically stated that the bus was taken to workshop at Karaikudi, where the repair work of the bus took place. In the said process, an iron spark hit the eyes of the 1st respondent/injured and he suffered injury. The percentage of disability suffered by the 1st respondent/workman as well as the coverage of insurance policy are not in dispute.

12. The significant factor in this case is that on the side of the appellant insurance company, RW1-Administrative Officer of the appellant insurance company alone was examined. In her evidence, she has deposed that normally, the appellant would engage an investigating officer, whenever they entertain a doubt and in this case, no investigating officer was appointed by the insurance company to find out the truth as to the employment of the 1st respondent. In this regard, it is relevant to extract the following passage from the cross examination of RW1 by the 1st respondent/workman.

VERNACULAR MATTER

13. In the instant case, the sole witness of the appellant has stated that no such officer was appointed. The witness of the appellant insurance company has also deposed that the 2nd respondent took insurance policy covering the driver and conductor and also one another workman and the statement of the said witness in this regard is as follows:-

VERNACULAR MATTER

14. The aforesaid facts are taken note of by the Commissioner for Workman Compensation while passing the award in the claim petition filed by the 1st respondent for compensation, against the employer as well as the insurance company. Based on the aforesaid evidence, the Commissioner for Workman Compensation has recorded a finding of fact that the 1st respondent was employed by the 2nd respondent and the accident arose out of and during the course of employment. Whether at the time of accident, the 1st respondent was workman under the 2nd respondent or not, in my view, is purely a question of fact and no question of law is involved, particularly, when there is no perversity in the findings.

15. For the aforesaid reasons, the Civil Miscellaneous Appeal fails and the same is dismissed. The 1st respondent is permitted to withdraw the entire award amount that lies in the credit of W.C.No. 244 of 2008 on the file of the Workmen's Compensation Commissioner, Madurai. No costs. Consequently, M.P(MD)Nos.1 of 2013 and 1 of 2014 are closed.