

(2013) 09 MAD CK 0163
In the Madras High Court
Case No : C.M.A. No. 1503 of 2001

The National Insurance Co. Ltd.

APPELLANT

Vs

B. Jayapal and C. Sivakumar

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0163

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

Bench : Single Bench

Advocate : S. Arunkumar, for the Appellant; A. Palaniappan for R1 and Mr. L. Pandiyan for R2, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/second opposite party has preferred the present appeal against the Order dated 25.06.2001, made in

W.C. No. 58 of 1999, on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour-II, Chennai-6. The

short facts of the case are as follows:-

The applicant has filed the claim petition in W.C. No. 58 of 1999, on the file of the Commissioner for Workmen's Compensation and Deputy

Commissioner of Labour-II, Chennai-6, claiming compensation of a sum of Rs. 3,00,000/- from the opposite parties for the injuries sustained by

him in an accident arising out of and while doing his duty under the employment of the first opposite party.

2. It was submitted that the applicant was employed as a driver of Mahindra Van bearing registration No. TN21 X6919 that belonged to the first

opposite party and insured with the second opposite party and he was employed

for six months. Thereafter, he was willing to buy the said van from the owner and on 15.08.1998, he had paid a sum of Rs. 5,000/- as advance.

3. That on 22.08.1998, at about 11.30 a.m., the applicant along with his friends Vijayan and Seenu were proceeding in the van, after finishing their work at Thatchur and returning to Ponneri and when they were nearing Andarkuppam Indian Bank, the van had collided with a road side tree and in the said accident, the applicant along with his friends sustained grievous injuries. The applicant was taken to Government General Hospital, Chennai and was admitted as an inpatient. Due to the injuries sustained in the accident, the applicant's left leg movement had been lost and his disability was assessed at 60%. Hence, the applicant had filed the claim petition against the opposite parties, who were the owner and insurer of the van bearing registration No. TN21 X6919.

4. The first opposite party, in his counter statement, had admitted that the applicant was an employee and worked as a driver of the van bearing registration No. TN21 X6919. It was submitted that on 10.02.2000, a person representing as an investigator attached to Raghavendra Associates, Triplicane, working for the second opposite party, enquired about the accident and after getting all the information relating to the said accident, obtained a signature of the first opposite party in a blank paper stating that he had to file a report to the second opposite party about the accident. Further, it was submitted that as the first opposite party had insured his van with the second opposite party, only the second opposite party is liable to pay compensation to the applicant. It was submitted that the compensation claimed by the applicant was excessive.

5. The second opposite party Insurance Company in their counter statement had submitted that the first opposite party's vehicle had not been insured with them at the time of the accident and that it was not covered under a valid RC, FC and permit at the time of the accident. It was submitted that the applicant also did not have a valid driving licence to drive the vehicle at the time of accident. The averments made in the claim petition that the applicant was employed under the first opposite party and that the accident had occurred out of and during the course of employment of the applicant was also not admitted.

6. It was submitted further that the applicant was an unemployed youth, who by

paying a token advance to the first opposite party under an agreement to buy the said vehicle, had taken possession of the vehicle and on the date of accident, he had gone on a joy ride along with his friends and as he did not have any experience to drive the vehicle had driven it in a rash and negligent manner and suppressing all those facts, the applicant had filed the claim petition with a malafide intention of claiming compensation. The averments made in the claim petition regarding nature of injuries, period and manner of treatment and disability was also not admitted. It was submitted that the claim was excessive.

7. On the applicant's side, two witnesses were examined as A.Ws.1 and 2 and six documents were marked as Exs. A1 to A6 namely FIR, discharge summary, insurance policy, driving licence, disability certificate and X"ray. On the opposite parties side, two witnesses were examined as R.Ws.1 and 2 and three documents were marked as Exs. R1 to R3.

8. P.W.1 the applicant had adduced evidence that he was employed as a driver by the first opposite party on a monthly salary of Rs. 3,000/- and batta of Rs. 50/- per day. On 22.08.1998, he had gone from Chengelpet to Madras and dropped the passengers and picked up certain passengers for Ponneri and on the way, at Thatchur Road, he picked up two persons namely Seenu and Vijayan, who were known to him and at Andarkuppam the said van met with an accident as it had dashed against the Banian tree. He deposed that due to the accident, he had fractured his left leg and a surgical operation was conducted and a steel rod was fixed.

9. P.W.1 in his cross-examination had stated that he did not give FIR and he did not know who gave it. He admitted that after his discharge he did not enquire with the Police Station as to who had given the complaint. On scrutiny of Ex. P1, it is seen that the applicant had been as the owner of the said vehicle.

10. R.W.1 Saravanan, an Assistant of the second opposite party, had adduced evidence that the vehicle bearing registration No. TN21 X6919 belonged to the first opposite party and was insured with them at the time of the accident. He deposed that Thiru Guru Raghavendra Associates was appointed as an investigator by the second opposite party and that as per the report submitted by them it was stated that the first opposite party had given a letter stating that the applicant Jayapal was not employed by

him and as such the claim of compensation filed by the applicant was not maintainable. He had submitted that he did not file as evidence the agreement of the applicant with the first opposite party for the purchase of the vehicle bearing registration No. TN21 X6919 and he also admitted that he did not know whether the signature in Ex. R2 is that of the first opposite party.

11. R.W.2 S. Padmanabhan, one of the partners of Guru Raghavendra Associates, had adduced evidence that they had gone and met Sivakumar, the first opposite party to enquire about the accident and that the first opposite party had given a letter Ex. R2 stating that Jayapal was not employed as a driver under him.

12. However, the Deputy Commissioner of Labour had observed that the second opposite party had not examined the first opposite party to prove the veracity of Ex. R2 letter alleged to be written by him to substantiate on what circumstance, the letter was signed by him. The Deputy Commissioner of Labour had opined that the counter filed by the first opposite party was more authentic as it had been filed directly by him and also observed that Ex. R2 letter of Sivakumar was only filed by a third party and further observed that in the counter of the first opposite party it was stated that he had signed in blank papers and given it to the investigators. Hence, the Deputy Commissioner, relying on Ex. A1 FIR and Ex.

A2 discharge summary held that the applicant was employed with the first opposite party as driver and that he had sustained injuries in an accident that took place on 22.08.1998 arising out of and in the course of his employment.

13. P.W.2 Dr. Thiagarajan had adduced evidence that he had examined the applicant and found that due to the accident the applicant had sustained fracture of left thigh bone and in his left hip joint and that a surgical operation was conducted and steel plates with screw were fixed. He deposed that there was painful swelling over the implant and shortening of left leg by one inch. He further deposed that the movement of the applicant's left hip joint had been restricted and only 60% flexion was possible and that the restriction was 15%. He further deposed that the applicant's flexion of left knee was restricted to 30% and he had difficulty in squatting and driving vehicles.

14. Hence, the Deputy Commissioner of Labour, on scrutiny of evidence of

Doctor, had held that the loss of earning capacity sustained by the applicant was 40%. The Deputy Commissioner of Labour on taking the wage of the applicant as Rs. 2,000/- per month and adopting a multiplier of 215.28 had awarded a sum of Rs. 1,03,334.40 as compensation under the head of loss of income ($60/100 \times 215.28 \times 2000 \times 40/100$) and directed the second opposite party, being the insurer of the first opposite party's vehicle to pay the said compensation amount within a period of thirty days from the date of receipt of a copy of this Order, failing which the second opposite party was directed to pay it along with interest at the rate of 12% per annum from the date of filing of the application till the date of payment of compensation is maintainable.

15. Aggrieved by the Award passed by the Deputy Commissioner of Labour, the second opposite party Insurance Company has preferred the present civil miscellaneous appeal.

16. The learned counsel appearing for the appellant Insurance Company has contended in his appeal that the Deputy Commissioner of Labour had failed to note that as per Ex. A1 dated 23.08.1998 the vehicle was in personal use of the complainant. It was contended that the Deputy Commissioner erred in placing reliance on the counter statement of the second respondent herein as the second respondent herein failed to appear and depose in support of his counter statement. Further, it was contended that the Deputy Commissioner of Labour failed to infer that there was collusion between the respondents herein and failed to note that the first respondent herein has claimed to be the owner of the van involved in the accident. Hence, it was prayed to set aside the award as against the appellant.

17. The learned counsel appearing for the appellant has submitted that the first opposite party had openly admitted in his counter statement that the applicant had been engaged by him as a driver for the van bearing registration No. TN21 K6919, which belongs to the first opposite party. R.W.2 Padmanabhan of Thiru Guru Raghavendra Associates had deposed that he had conducted investigation and filed the letter issued by the first opposite party. It reveals that the first opposite party never engaged the applicant as driver. This kind of investigation and the alleged letter received from the first opposite party is not dependable since it was a created one. Further, the learned Deputy Commissioner of Labour had

considered the evidence of the applicant and scrutinized the documents marked by both parties and passed the impugned order on merits. As

such, there is no lacuna in the said order.

18. On verifying the factual position of the case and arguments advanced by the learned counsel on either side and on perusing the impugned

award of the Deputy Commissioner of labour, this Court does not find any discrepancy in the conclusions arrived at regarding employer-employee

relationship and also that the said accident had occurred in the course of employment. This Court is of the further view that the applicant had

sustained injuries in the course of employment and he had driven the van as a qualified driver, who had been engaged by the first opposite party as

it is seen from the evidence of the witnesses. Further, the Deputy Commissioner of Labour had assessed the compensation on the basis of

disability, age and salary of the applicant in an appropriate manner.

19. As per the records, it is seen that the entire compensation amount with accrued interest thereon has been deposited by the second opposite

party, to the credit of W.C. No. 58 of 1999, on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of

Labour-II, Chennai-6. Now, it is open to the applicant to withdraw the entire compensation amount with accrued interest thereon, lying in the

credit of W.C. No. 58 of 1999, on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour-II, Chennai-

6, after filing a memo, along with a copy of this Order and after identification of the applicant by his counsel. In the result, the appeal is dismissed

and the Order dated 25.06.2001, made in W.C. No. 58 of 1999, on the file of the Commissioner for Workmen's Compensation and Deputy

Commissioner of Labour-II, Chennai-6, is confirmed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.