
(2013) 08 MAD CK 0148

In the Madras High Court

Case No : C.M.A. No. 2926 of 2007, M.P. No's. 1 of 2007, 2 of 2008 and 1 of 2013

The National Insurance Co. Ltd.

APPELLANT

Vs

Sekar Alias Dhanasekar and Ebrahim Khan

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2013) 08 MAD CK 0148

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

Bench : Single Bench

Advocate : S. Vadivel, for the Appellant; V. Parivallal for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The 1st respondent herein/applicant has filed W.C. No. 37 of 2004, on the file of Deputy Commissioner of Labour-1, Chennai against the appellant herein and 2nd respondent herein stating that on 19.07.2003, at about 9.30 a.m., when he was continuously working as a Coolie in the employees lorry i.e. bearing Registration No. TN-33-N-0097, at Kappalur Palar Paper Mills, the driver of the lorry had driven it in a rash and negligent manner, as a result of which the paper load on the lorry fell down on the applicant. As a result, he had sustained multiple grievous injuries. Hence, he has claimed compensation of a sum of Rs. 3,31,506/-. The Insurance Company had filed counter statement and resisted the claim petition. The respondent denied the averments in the claim regarding age, income and occupation of the applicant. It was submitted that there was no employer-employee relationship between the 1st respondent and the applicant. Actually, the applicant had travelled as a gratuitous passenger on the said lorry. The respondent further submitted that the lorry was not covered under valid documents namely Registration Certificate, Fitness Certificate, Insurance Policy and Permit. The driver did not possess a valid driving licence.

2. On considering the averments of both parties, the Deputy Commissioner of Labour had framed five issues namely: (1) Whether the accident had happened

in the course of employment of the applicant under the 1st respondent? (2) What is the age and income of the applicant? (3) What is the quantum of loss of earning capacity sustained by the applicant? (4) What is the quantum of compensation which the applicant is entitled to get? and (5) Who is liable to pay compensation?

3. On the side of the applicant, 8 documents were marked as Exhibits P1 to P8 namely, Ex. P1-F.I.R.; Ex. P2-Medical Discharge summary; Ex. P3-Driving licence; Ex. P4-R.C. Book; Ex. P5-Insurance Policy; Ex. P6-Permit; Ex. P7-Accident register; and Ex. P8-Disability certificate. On the side of the respondents", two witnesses were examined and two documents were marked namely Copy of Insurance Policy and Investigation report. On the side of the applicant, the applicant and Doctor were examined as PW1 and PW2. PW1 had adduced evidence that on 19.07.2003, he was working as a coolie at Kappalur Village, Palar Paper Company under the 1st respondent and he was getting a daily wage of a sum of Rs. 150/-. While he was doing his coolie work in the employee's lorry, bearing Registration No. TN-33-N-0097, the Paper bundle on top of the lorry fell on his spinal cord. As a result, he sustained fracture on his spinal cord, hip, left hand shoulder. Therefore, a surgical operation was conducted. PW1 further stated that he was hospitalised for 7 months as an inpatient. In support of his evidence, he had marked the above mentioned documents.

4. PW2, Doctor had adduced evidence that the applicant's leg had been rendered inactive due to the accident. His T12 bone in spinal cord was fractured. He had assessed the disability as 100%. RW2, had adduced evidence that he had conducted investigation and found that the applicant was an employee at Palar Paper Mills, as a coolie. On 19.07.2003, at about 09.30 a.m., the lorry had come to the Paper mill with load. At that time, the driver of the lorry removed the rope which had been tied to the paper bundles. As a result, the paper bundle fell on the applicant.

5. PW2, further stated that the applicant had undergone surgical operation and bone grafting also. The age of the applicant was 40 years. On considering the evidence of both the parties and on perusing the documents marked by them, the Tribunal had awarded a sum of Rs. 3,22,158/- as compensation. Against the said impugned order, the Insurance Company has filed the said appeal.

6. The highly competent counsel for the Insurance Company argued that the applicant was not at all an employee under the 1st respondent, but he was employed as a Coolie in the Kappalur Palar Paper Mills. The same has been proved through PW1 evidence. Even then, the learned Deputy Commissioner of Labour had erroneously fastened the liability on the Insurance Company. The applicant had not indicated the nature of injuries in his evidence. However, the Doctor had assessed the disability at 100% which is on the higher side. The learned counsel further submits that the applicant had not produced salary certificate or employer evidence regarding his income.

7. The highly competent counsel for the applicant vehemently argued that, after producing photo copies of applicant, that both the applicant's legs had been paralysed and is always bedridden. At the time of accident, he was aged 40 years and was earning Rs. 150/- per day, as a coolie. He is the only breadwinner of his family. After the accident, he is not able to do his work as before as he has been incapacitated. The applicant had been hospitalised for about 7 months as an inpatient. A surgical and bone grafting operation were conducted on the spinal cord and left hip of the applicant. Therefore, the Doctor had assessed the disability at 100%. On the basis of age, occupation, income and disability percentage, the compensation had been assessed and the same was awarded to the applicant. The very competent counsel further pointed out that the accident had been committed by the driver of the lorry while the applicant was unloading the paper bundle. The said lorry belongs to the 1st respondent and the lorry had been insured with the appellant herein. Therefore, the impugned order has been passed in an appropriate manner against the Insurance Company.

8. On considering the facts and circumstances 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 shortcomings in the conclusions arrived at regarding employer-employee relationship, liability and quantum of compensation. This Court is of the further view that the learned Deputy Commissioner of Labour had framed five necessary issues and decided them after recording the evidence of both sides and on perusing the documents marked by them in an appropriate manner. The learned counsel for the Insurance Company informed this Court that the entire compensation amount had been deposited before the Deputy Commissioner of Labour.

9. Now, it is open to the applicant to withdraw the entire compensation amount, with accrued interest thereon, if any, lying in the credit of W.C. No. 37 of 2004, on the file of Deputy Commissioner of Labour -1, Chennai 600 006, after filing a memo, along with a copy of this order. The learned Deputy Commissioner of Labour-1, shall disburse the compensation amount forthwith, after identification of the applicant by his counsel. In the result, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed in W.C. No. 37 of 2004, dated 30.08.2007, on the file of the Commissioner for Workmen's Compensation-1 Court/Deputy Commissioner of Labour -1, Chennai 600 006, is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.