
(2013) 09 MAD CK 0098
In the Madras High Court
Case No : C.M.A. No. 651 of 2008

The New India Assurance Co. Ltd.

APPELLANT

Vs

A. Dharman and R. Sekar

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0098

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

Bench : Single Bench

Advocate : M. Krishnamoorthi, for the Appellant; V. Velu for R1 and No appearance - 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 17.12.2007, made in

W.C. No. 234 of 2006, on the file of the Court of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-2) at Chennai.

The short facts of the case are as follows:--

The applicant namely A. Dharman was travelling along with three loadmen on the lorry bearing registration No. TN09 F1159, on 02.04.2006, at

about 09.00 hours on the E.C.R. Road, Chennai and at that point of time, the driver of the lorry had driven the vehicle in a negligent manner and

dashed against an electric post. As a result, all the four loadmen had sustained injuries, including the applicant. Hence, the compensation petition

has been filed against the employer and Insurance Company.

2. The Insurance Company had filed their counter statement and resisted the compensation petition and denied the averments regarding age,

income and occupation of the applicant. Further, they have denied that employer-employee relationship existed between the first opposite party

and the applicant. Further, the Insurance Company had denied the averments that their company had insured the lorry. It was also submitted that

the driver of the lorry did not possess a valid driving licence and it was further submitted that as per the FIR the applicant had travelled as a

gratuitous passenger. Therefore, they prayed to dismiss the claim petition made by the applicant.

3. On considering the averments of both sides, the Deputy Commissioner of Labour had framed five issues namely:

i. Whether the applicant had sustained injuries in the accident arising out of and during the course of employment under the first opposite party?

ii. What is the age and salary of the applicant?

iii. What is the loss of earning capacity?

iv. To what relief the applicant is entitled to get? and

v. Who is liable to pay compensation?

4. On the applicant's side, two witnesses were examined as P.Ws.1 and 2 and ten documents were marked as Exs.P1 to P10 namely FIR, Copy

of RC Book, Copy of Driving licence, Policy, M.V.I's report, discharge medical summaries, X-ray, Wound Certificate, CT Scan. On the

opposite parties" side, two witnesses were examined as R.Ws.1 and 2 and four documents were marked as Exs.R1 and Ex.R4 namely Own

Damage Claim, Notice to first opposite party, Notice to second opposite party and Authorization letter.

5. P.W.1 had adduced evidence that he was a loadman under the first opposite party in the lorry bearing registration No. TN09 F1159 and he

was paid a salary of Rs. 3,500/- per month and a daily batta of Rs. 30/-. On 02.04.2006, at about 09.00 a.m., when he was returning to Chennai,

after unloading the goods at Mahabalipuram, the driver of the lorry had suddenly turned the vehicle to the left side, in order to avoid collision with

an oncoming van. As a result, the lorry had dashed against an electric post. He further stated that he had sustained fracture injuries on his left thigh

and below left leg knee and he had been hospitalized from 02.04.2006 to 05.07.2006 and again from 14.12.2006 to 02.01.2007, as an inpatient

at Government General Hospital, Chennai.

6. P.W.2 Doctor had adduced evidence that the applicant's left thigh bone had been broken into pieces and come out through the skin and a plate

with screws had been fixed and that the fractured bone had malunited and that the applicant's left leg had been shortened by 1 1/2". He deposed

further the left leg sole had been lifted up above the ground by 2" and that the applicant had sustained 80% disability.

7. R.W.1 had adduced evidence that he was a Supervisor under the first opposite party and that Dharman, P. Palani, Panchaksharam and A.

Palani were employed under the first opposite party as loadmen. All the loadmen were paid salary and daily batta.

8. R.W.2 had adduced evidence that the first opposite party had insured his vehicle under the category of own damage claim. The driver of the

lorry alone was an employee under the first opposite party and the applicant was not an employee under the first opposite party. The policy

extends coverage of insurance for seven employees.

9. On considering the evidence of the witnesses and on perusing the documents marked by both sides, the Deputy Commissioner of Labour-II had

awarded a sum of Rs. 2,37,195/- (3689 x 60/100 x 153.09 x 70/100) as compensation to the applicant.

10. Against the said Award, the second opposite party Insurance Company has filed the above appeal.

11. The highly competent counsel appearing for the appellant Insurance Company has argued that the applicant was travelling as an unauthorised

passenger and as such the Insurance Company is not liable to pay compensation. The FIR ingredients did not disclose that the applicant was a

loadman. The evidence of R.W.1, who is an interested witness, cannot be relied on. Therefore, the Insurance Company shall be exonerated from

the liability. The Doctor had assessed the disability, which is on the higher side.

12. The very competent counsel for the applicant has submitted that R.W.1, who was the supervisor of the first opposite party had adduced

evidence that the applicant was a loadman under the first opposite party and they have been paid salary besides daily batta. The first opposite

party had paid premium for extending coverage of insurance for seven employees. The applicant had sustained grievous injuries on his left thigh and

his left leg had been shortened by 1 1/2". Considering the employer-employee

relationship, nature of injuries and age, the compensation amount

had been assessed after framing five issues. As such, there is no lacuna in the impugned award of the Deputy Commissioner of Labour.

13. On verifying 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 short comings in the conclusions arrived at regarding

negligence, liability and that the accident had arisen out of and during the course of employment under the first opposite party. The quantum of

compensation had also been assessed on the basis of age, salary and disability percentage in an appropriate manner. Hence, this Court is not

inclined to entertain the above appeal. Therefore, the impugned Award is liable to be confirmed.

14. As per records, it is seen that the entire compensation amount is deposited before the Deputy Commissioner of Labour. Now, the applicant is

at liberty to withdraw the entire compensation amount, with accrued interest thereon, if any, lying in the credit of W.C. No. 234 of 2006, on the file

of the Court of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-2) at Chennai, after filing a memo along with a

copy of this Order and after identification of the applicant by his counsel. In the result, the civil miscellaneous appeal is dismissed and the Order

dated 17.12.2007, made in W.C. No. 234 of 2006, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of

Labour-2) at Chennai, is confirmed. Consequently, connected miscellaneous petitions are closed. No costs.