
(2013) 09 MAD CK 0164
In the Madras High Court
Case No : C.M.A. No. 952 of 2008

The United India Insurance Co. Ltd.

APPELLANT

Vs

Sampath and M. Settu

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2014) 1 LLJ 78

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

Bench : Single Bench

Advocate : M. Krishnamoorthi, for the Appellant;

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The appellant/second opposite party has preferred the present appeal against the Order dated 28.12.2007, made in

W.C. No. 355 of 2006, on the file of the Commissioner for Workmen's Compensation (DCL-II), Chennai. The short facts of the case are as

follows:-

The applicant has filed the claim petition in W.C. No. 355 of 2006, on the file of the Commissioner for Workmen's Compensation (DCL-II),

Chennai, claiming compensation of a sum of Rs. 5,00,000/- 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. It was submitted that the first opposite party was the owner of the

TATA Ace Trailer bearing registration No. TN21 H4894 and the second opposite party was the insurer of the vehicle. The applicant was working

as a Coolie under the first opposite party and drawing a monthly salary of Rs. 5,000/- inclusive of batta.

2. On 13.06.2006, at about 07.15 a.m., when he was proceeding, as a Coolie, in the said vehicle carrying load of cooking materials, from Vishar to Kancheepuram, at Kundukulam on Perumbakkam-Kancheepuram Road, the vehicle was involved in an accident. As a result, the applicant had sustained fracture of bone in his left leg and both hands and was admitted at Kancheepuram Government Hospital, wherein he received treatment as an inpatient from 13.06.2006 to 21.06.2006. Due to the disability sustained by him in the said accident, he was not able to do his work as before. Hence, he had filed a claim petition against the opposite parties, who were the owner and insurer of the trailer bearing registration No. TN21 H4894.

3. The second opposite party Insurance Company, in their counter statement, had stated that the applicant was an agricultural coolie and that no employer-employee relationship existed between the first opposite party and the applicant. The averments made in the claim application that the applicant had sustained injuries in the accident arising out of and while doing his work as an employee during the course of employment under the first opposite party was also not admitted. Further, the averments regarding age, income, disability and loss of income were also not admitted. Further, it was submitted that FIR had been lodged after a delay of ten days. It was submitted that the first opposite party's vehicle had not been covered under the policy of insurance with them at the time of the accident.

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

- i. Did the applicant sustain injuries in an accident arising out of and while doing his duty in the course of employment under the first opposite party?
- ii. What is the age and income of the applicant?
- iii. What is the loss of earning capacity sustained by the applicant?
- iv. What is the quantum of compensation, which the petitioner is entitled to get? and
- v. Who is liable to pay compensation?

5. On the applicant's side, two witnesses were examined as P.Ws.1 and 2 and eleven documents were marked as Exs. P1 to P11 namely FIR, driving licence, RC Book, insurance policy, photos showing injuries sustained, discharge summary, advocate notice, X-rays and disability

certificate. On the opposite parties side, no witness was let in and no document was marked.

6. P.W.1 the applicant had adduced evidence that he was working as a loadman under the first opposite party for his vehicle bearing registration

No. TN21 H4894 and got a sum of Rs. 3,000/- as monthly salary and Rs. 50/- as daily batta. He deposed that on 13.06.2006, at about 07.15

a.m., when he was proceeding, as a loadman, in the said vehicle carrying load of paddy bags, from Vishar to Kancheepuram, at Kundukulam on

Perumbakkam-Kancheepuram Road, the driver of the vehicle had turned it at a high speed and in a negligent manner and due to which the vehicle

had capsized and he had been caught under the paddy bags.

7. Further, he deposed that he had sustained fracture of bones in both hands and that his left eye vision had been affected and that he had received

treatment at Kancheepuram Government Hospital, as an inpatient from 13.06.2006 to 21.06.2006 and later on he had received treatment at

Puthur. He deposed further that after the accident, he was not able to do his work as before and in support of his evidence, he had marked Exs.

P1 to P9.

8. P.W.2 Dr. Thiagarajan had adduced evidence that on 17.08.2007, he had examined the applicant and found that due to the accident, the

applicant had sustained fracture of bone in his fingers of his left hand and that the fractured bone had malunited. Further, he deposed that the

applicant would have difficulty in taking heavy objects by using his left hand and deposed that the applicant had sustained 45% disability and in

support of his evidence, he had marked Exs. P10 and P11.

9. The Deputy Commissioner of Labour, on scrutinizing that the first opposite party had neither filed a counter statement nor adduced evidence to

refute the claim of P.W.1 regarding the employer-employee relationship and accident, held that the applicant was working as a loadman under the

first opposite party and that he had sustained injuries on 13.06.2006 in an accident arising out of and while doing his duty in the course of

employment under the first opposite party. On scrutinizing of Exs. P3 and P4, it is seen that the first opposite party was the owner of the vehicle

and it was insured with the second opposite party.

10. The Deputy Commissioner of Labour on holding that the disability assessed

was on the higher side held that the disability sustained by the applicant was 40%. On scrutinizing of Ex. P6, it is seen that the applicant was 52 years at the time of accident. Further, the Deputy Commissioner on holding the notional income of the applicant as Rs. 3,689/-, as per the Minimum Wages Act, enacted as per G.O.Ms.(2) No. 47, Labour and Employment, dated 01.08.2003 and on adopting a multiplier of 146.20, awarded a sum of Rs. 1,29,440/- as compensation to the applicant under the head of loss of income ($146.20 \times 60/100 \times 40/100 \times 3689$) and directed the second opposite party is to pay the said sum within a period of thirty days from the date of receipt of a copy of that order, failing which, the second opposite party is to pay the said amount together with interest at the rate of 12% per annum, from the date of filing of the application till the date of payment of compensation.

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

12. The learned counsel appearing for the appellant Insurance Company has argued that the Deputy Commissioner of Labour had overlooked the fact that in the complaint lodged by the claimant and based on which FIR had been lodged. Further, he has argued that the applicant along with many more persons from his village came to the main road to go to Kancheepuram and then boarded the insured TATA Ace to go to Kancheepuram and as such the Deputy Commissioner of Labour ought to have rejected the application as he was not a workman under the insured.

13. Further, the learned counsel has argued that the Award of Rs. 1,29,440/- as compensation for the fracture of metacarpal bones and index finger in the left hand was excessive as the injuries sustained were non-scheduled injuries.

14. Further, the learned counsel has argued that the Deputy Commissioner of Labour had erred in fixing the loss of earning capacity at 40% for the fracture sustained in fingers, which is a non-schedule injury and the monthly income fixed by the Deputy Commissioner of Labour was excessive.

Therefore, the learned counsel prays this Court to set aside the order passed by the Deputy Commissioner of Labour.

15. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel for the appellant and on perusing the impugned award, this Court does not find any infirmities in the conclusions arrived at regarding employer-employee relationship, liability and that the accident took place in the course of employment. This Court is of the further view that the applicant had established his case after adducing evidence and marking necessary documents as exhibits.

16. On the side of the opposite parties no one was examined and no document was marked to rebut the contention of the applicant. this Court is of the further view that the Deputy Commissioner of Labour had assessed the compensation on the basis of age, income, occupation and disability, in an appropriate manner. As such, the impugned award is found to be executable.

17. 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. 355 of 2006, on the file of the Commissioner for Workmen's Compensation (DCL-II), Chennai. 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. 355 of 2006, on the file of the Commissioner for Workmen's Compensation (DCL-II), 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 appeal is dismissed and the Order dated 28.12.2007, made in W.C. No. 355 of 2006, on the file of the Commissioner for Workmen's Compensation (DCL-II), Chennai, is confirmed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.