
(2010) 03 MAD CK 0106
In the Madras High Court
Case No : C.M.A. No. 851 of 2000

V. Arputharaj

APPELLANT

Vs

The General Manager, Telecommunications Department

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47, 72
Workmens Compensation Act, 1923 — Section 10, 2(1), 20(3), 3, 4

Citation : (2010) 03 MAD CK 0106

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

Bench : Single Bench

Advocate : P.V.S. Giridhar, for the Appellant; M. Govindaraj, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/petitioner against the Order dated 12.07.1999,

made in W.C. No. 163 of 1997, on the file of the Workmen's Compensation Commissioner (Deputy Commissioner of Labour), Coimbatore,

dismissing the claim of Rs. 41,984/- made by the appellant/petitioner.

2. Aggrieved by the said Order, the appellant/petitioner has filed the above appeal praying to set aside the Order of the Workmen's

Compensation Commissioner, Coimbatore and to direct the respondent to pay a sum of Rs. 41,984/- to the appellant, with interest at the rate of

12% per annum from the date of accident till the date of payment.

3. The short facts of the case are as follows:

The petitioner was employed as Masdoor in the Telecommunications Department, Coimbatore. On 26.07.1995, while the petitioner was engaged

in doing his work, in the course of his employment, at the Telephone Board at Murugampalayam, which comes under the jurisdiction of the Sub-

divisional Officer, Telecommunication Department (South), Tiruppur, he received electric shock, due to which he was thrown away. In the result,

he sustained fracture on his right thigh bone. At the time of accident, the petitioner was aged about 29 years and was getting a monthly income of

Rs. 1,823/-. The petitioner has stated that due to the injuries sustained in the accident, he has sustained 40% of the disability, which was certified

by a Government Doctor and hence he has claimed a compensation of Rs. 41,984/- from the respondent, who is the General Manager,

Telecommunication Department, Coimbatore, u/s 10 of the Workmen's Compensation Act.

4. The respondent, in his counter, has resisted the claim stating that the age and disability sustained by the petitioner has to be proved through

documentary evidence. The respondent has admitted the claim of the petitioner that he had sustained injuries in the accident caused on

26.07.1995, while working under the instructions of his manager. It has been submitted by the respondent that an Engineering Committee was set

up and an investigation was carried out by them regarding the cause of the accident and it was found by the committee that the Tamil Nadu

Electricity Board is also to be held equally responsible for the cause of the accident. As such, it has been submitted by the respondent that the

petition is bad for non-joinder of the necessary parties. It has also been submitted that the Disability Certificate issued by the Government Hospital,

Tiruppur lacked material clarity and as such the respondent had sought a fresh certificate from the hospital authorities through the claimant

indicating the exact nature of injuries sustained and the type of disability suffered.

5. The Workmen's Compensation Commissioner framed four issues for the consideration namely:

(i) Does the petitioner Arputharaj come under the category of workman under the Workmen's Compensation Act?

(ii) Did the accident happen during the course of his employment under the respondent?

(iii) What is the quantum of compensation, which the petitioner is entitled to get?

(iv) Who is liable to pay the compensation to the petitioner?

6. The petitioner in his petition and evidence before the Commissioner had deposed that on 26.07.1995, while he was working at the Telephone

Board at Murungampalayam, which comes under the jurisdiction of the Sub-divisional Officer, Telephones (South), he had received electric shock

and as a result he had sustained injuries. The respondent, in his counter, has admitted the claim of the petitioner that the accident had occurred

during the course of his employment under them. As such, the Commissioner held that the petitioner can be considered to be a workman as per the

Workmen's Compensation Act and also held that the petitioner had sustained injuries in the accident during the course of his employment under

the respondent.

7. As the respondent had not countered the claim of the petitioner that he was getting a monthly salary of Rs. 1,823/-, the Commissioner held that

the monthly salary of the petitioner was Rs. 1,823/- and accordingly fixed the salary of the petitioner as Rs. 1,000/- to compute the quantum of

compensation to be paid to the petitioner.

8. The petitioner, in his evidence, has stated that due to the accident, he had sustained fracture of his right thigh bone and that a surgical operation

was carried out in his leg and a steel plate was fixed inside his leg. He has deposed that because of the fixing of the steel plate inside his leg, he is

not able to sit, squat and climb. It has been contended on the part of the respondent's side that the disability sustained by the petitioner in the

accident was a partial disability only and as such, the petitioner is not entitled to get the compensation claimed by him.

9. The petitioner, during cross-examination, had stated that he was still working under the respondent, in the same capacity and getting the same

salary, which he used to get before the accident. But, on scrutiny of the Order copy dated 01.06.1999 filed by the respondent ref. P&I Genl.

Corr. P.C.10/98-99/11 CB 18, it is found that the petitioner has been promoted as "PM" on 17.11.1997 and that his pay scale has been fixed at

Rs. 3,200-85-4,900 and that he is presently getting a monthly salary of Rs. 4,590/-. As such, the Tribunal, on considering that the petitioner has

been promoted in his work, after the accident and considering that he is receiving an increased salary of Rs. 4,590/- per month held that the

petitioner had not sustained any loss of his earning capacity.

10. The Commissioner for Workmen's Compensation considered the case law referred in FJR 85 P. No. 58, Kerala High Court, Manager,

Achoor Estate, Harrisons Malayalam Ltd. v. Smt. Pilakkal Nabeesa for arriving at the above conclusion. The operative portion of the said

Judgment reads as follows:

...Loss of earning capacity is different from loss of physical capacity. In some cases, any physical defect which may occur as a result of accident

may not reduce the workers earning capacity or capacity of work. If his earning capacity is diminished he can be said to be suffering from partial

incapacity for work. However, if his wage earning capacity has not been affected, he is not entitled to compensation.....

11. Though the petitioner has marked Ex.P4, the Disability Certificate to prove that he had sustained 40% permanent disability due to the accident,

he had not proved the genuineness of the same by examining the concerned Doctor, who had assessed his disability. As such, the Commissioner

for Workmen's Compensation, on considering the Judgment made in case law cited above and on considering that the disability sustained by the

petitioner has not been proved held that the petitioner has not suffered any loss in his earning capacity due to the accident and held that he is not

entitled to get any compensation as per the Workmen's Compensation Act and dismissed the claim of the petitioner.

12. The learned Counsel appearing for the appellant in his appeal has contended that the learned Commissioner ought to have appreciated that the

nature of injuries sustained by the appellant has been admitted by the respondent and as such there was no need for any detailed evidence other

than the Disability Certificate, which has been duly marked as Ex.P4. It has been contended that the learned Commissioner erred in rejecting the

claim of the appellant on the ground that he obtained a promotion after the accident and as such he cannot be said to have suffered any loss of

earning capacity, disregarding the fact that the appellant had admittedly suffered 40% disability. It has also been contended that the learned

Commissioner erred in disregarding the proof of age, proof of employment and proof of injury and disability produced by the appellant in rejecting

the claim.

13. The learned Counsel appearing for the appellant has raised the following substantial questions of law in his appeal:

1. Whether compensation can be denied when it is proved that injury arose out of and in the course of employment and the workmen has suffered disability?

2. Whether medical evidence, particularly a Disability Certificate duly marked in evidence can be ignored to reject a claim for compensation?

3. Whether absence of loss of earning capacity can be inferred from the mere fact that a workman is promoted after the injury?

14. As such, the learned Counsel appearing for the appellant has prayed to set aside the order of the Workmen's Compensation Commissioner

(Deputy Commissioner of Labour), Coimbatore and has sought for direction to the respondent to pay the appellant a sum of Rs. 41,984/- with

interest at 12% per annum from the date of accident till the date of payment.

15. The learned Counsel appearing for the appellant in support of his appeal has cited the following Judgments made in

II (1999) ACC 278 , Himachal Pradesh High Court, State of Himachal Pradesh v. Uma Dutt and Ors., the relevant head notes of which are as

follows:

(i) Workmen's Compensation Act, 1923 - Section 4 - Compensation - Commissioner allowed compensation of Rs. 49,294/- to workman -

Hence appeal - Contention, Commissioner relied upon medical certificate which was not proved in accordance with law - Contention not

acceptable - No objection raised at the time when medical certificate produced - Workman not cross-examined - Rules of natural justice required

to be observed for conducting enquiry by Tribunal - Commissioner has rightly preferred documentary evidence against oral, vague and

inconclusive evidence of State witness - Rightly awarded compensation.

2004 (2) L.L.N. 510, High Court of Judicature, Andhra Pradesh, Depot Manager, Andhra Pradesh State Road Transport Corporation and K.

Lakshman, the relevant head notes of which are as follows:

1. Workmen's Compensation Act, 1923, Section 3 - Compensation for employment injury - Employer's liability - Territorial jurisdiction of

Commissioner - Held, an injured workman can file petition under Workmen's Compensation Act, 1923, before Commissioner in whose

jurisdiction he was even temporarily residing at time of petition because convenience of injured workman is more important than convenience of employer.

2. Workmen's Compensation Act, 1923, Section 3 - Employer's liability for compensation - Evidence as produced showing that glass splinters

went into eyes of claimant/driver in an accident - Accident occurred out of and during course of employment resulting in said injuries established -

Claimant is entitled for compensation - Even if the employee has attended duty for one or two days after accident, it cannot be ground for rejecting

his claim.

3. Workmen's Compensation Act, 1923 - Provisions of CPC as to pleadings and proof, cannot strictly be applied to proceedings under the Act,

which is a welfare legislation - An injured workman needs only to state about his being involved in an accident and that accident arose out of and

during the course of his employment with his employer and that he received injuries therein - Also, that those injuries resulted in disability to him - If

the main essential ingredients are stated the other details are matter of evidence - The rule debtor should seek the creditor can and has to be

applied to the claims under Act.

4. Workmen's Compensation Act, 1923 - Determination of quantum of compensation - Medical fitness certificate produced by claimant showing

loss of vision in left eye in an accident arising out of and during the course of employment - Injury suffered is a scheduled injury - Commissioner

assessing disability as 60 per cent - In view of ceiling fixed by Act, Commissioner taking the salary of respondent as Rs. 2,000 per month and

fixing compensation payable as Rs. 1,62,672 - It is perfectly in accordance with provisions of the Act.

New India Assurance Co. Ltd. and Another Vs. K. Abdullakutty and Others, the relevant head notes of which are as follows:

(i) Workmen's Compensation Act, 1923, Section 4(1)(c)(ii) - Permanent disability and loss of earning capacity - Injuries to workmen - In some

cases the percentage of disability stated whereas in some others not stated - Commissioner fixed higher percentage of loss of earning capacity than

that certified by medical practitioner - Jurisdiction - Power of Commissioner - Whether the Commissioner alone charged with the duty of fixing the

loss of earning capacity? Yes.

National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, , the relevant head notes of which are as follows:

A. Labour Law - Workmen's Compensation Act, 1923 - Section 4(1)(c)(ii) - Permanent partial disablement - Injuries not specified in Schedule I

- Compensation - Determination of - Relevant factors - Loss of earning capacity, held, is not a substitute for percentage of physical disablement -

It is one of the factors to be taken into account - High Court, without indicating any reason or basis, holding that there was 100% loss of earning

capacity - Such conclusion without any basis, held, not sustainable - Hence, set aside - Order of Commissioner restored.

2007(3) SCC 316, National Insurance Co. Ltd. v. Mubasir Ahmed and Anr., the relevant head notes of which are as follows:

Workmen's Compensation Act, 1923 - Sections 4, 4A, 22 and 30 - Compensation claims - Physical disablement and functional disablement -

Relevant factors relating to loss of earning capacity - Liability to pay interest - Claimants claimed to be either a labourer or cleaner or driver of the

vehicle which was involved in the accident - These cases related to injuries which were not specified in Schedule I - Doctor examined to prove the

nature of injuries sustained and the alleged loss of earning capacity, indicated the percentage of permanent and temporary disablement, functional

disability and loss of earning capacity - Claimants filed appeals against the award made by the Commissioner - High Court held that in each case

there was 100% loss of earning capacity, therefore, awarded compensation directing grant of interest @ 12% p.a. from the date of accident till

actual realization - No basis was indicated in support of the conclusion - Whether judgment of the High Court without any discussion on the loss of

earning capacity is sustainable - (No) - whether rate of interest of 12% as fixed by the High Court can be faulted - (No) - However, the period as

fixed for the grant of interest is wrong - It cannot be the date of accident - It has to be taken to be the date of adjudication of the claim.

A. Subramani Vs. The Management of Tamil Nadu State Transport Corporation (Coimbatore Division I) Ltd. and The Presiding Officer Labour

Court, , the relevant head notes of which are as follows:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 (1 of 1996), Sections 72 and 47 - Benefit of alternative employment

Claim for, resisted on ground that appellant/workman, having received compensation under Workmen's Compensation Act, he could not again claim alternative employment in terms of Section 47 of Disabilities Act - Held, by virtue of Section 72 of Disabilities Act, provisions of Act are in addition to any other law for time being in force - As such, receipt of compensation under Workmen's Compensation Act would not disentitle workman to get benefits u/s 47 of Disabilities Act.

(2005) 12 SCC 217, Shyama Devi v. Union of India and Anr., the relevant head notes of which are as follows:

B. Labour Law - Workmen's Compensation Act, 1923 - Section 3 - Entitlement to compensation for death of workman in course of duty - Son of deceased given compassionate appointment, and full service benefits paid to family of deceased - Held, the same were no grounds to deny compensation under the 1923 Act.

C. Labour Law - Workmen's Compensation Act, 1923 - Sections 4, 4A(3) and Schedule IV -Amount of compensation - Pleadings in respect of - Binding effect of - Deceased earning Rs. 1600 p.m. and aged 56 years at time of death - As per Schedule IV his dependants entitled to Rs. 1,05,560 - However, since the claim made for Rs. 84,448 only, award of compensation restricted to latter sum, but to be paid with statutory interest u/s 4A(3) - Torts - Compensation/Damages.

II (1999) ACC 278 (DB), Himachal Pradesh High Court, State of Himachal Pradesh v. Uma Dutt and Ors., the relevant head notes of which are as follows:

(i) Workmen's Compensation Act, 1923 - Section 4 - Compensation - Commissioner allowed compensation of Rs. 49,294/- to workman -

Hence appeal - Contention, Commissioner relied upon medical certificate which was not proved in accordance with law - Contention not acceptable - No objection raised at the time when medical certificate produced - Workman not-cross-examined - Rules of natural justice required to be observed for conducting enquiry by Tribunal - Commissioner has rightly preferred documentary evidence against oral, vague and

inconclusive evidence of State witnesses - Rightly awarded compensation.

Mgt. of Tamilnadu Cement Corporation Ltd. Vs. N. Jayapalan, , and N. Jayapalan, the relevant head notes of which are as follows:

Workmen's Compensation Act, 1923 - Permanent disability - Despite that, workman employed on higher salary - It will not disentitle workman to

claim damages for disability - Opinion of Doctor on loss of earning capacity - It is a guide for Court to assess damages.

1998 (1) L.L.N. 902, Kerala High Court, Kerala Minerals and Metals, Ltd. And P. Madhavan and Ors., the relevant head notes of which are as

follows:

Workmen's Compensation Act, 1923, Secitons 4(1)(c)(ii) - Loss of earning capacity - Workman suffering injury in the course of employment -

Employee continued in employment on the same terms - However, employee claiming compensation - Commissioner for Workmen's

Compensation awarding certain sum based on loss of earning capacity assessed by him - Management resisting the claim on grounds that since

workman was being continued in service he has not suffered any loss of earning capacity and that mere loss of some fingers or other injuries

without there being loss of earning capacity, he will not be entitled to any compensation - Rejecting the contention of management High Court,

following 1988 (1) L.L.N. 393, held that the workman was entitled to compensation - Award of Commissioner for Workmen's Compensation not

interfered with:

United India Insurance Co. Vs. Sethu Madhavan, , the relevant head notes of which are as follows:

(i) Workmen's Compensation Act, 1923 - Section 4(1)(c)(ii) - Workmen sustaining injuries - Qualified medical practitioner certifying the

percentage of disability - Commissioner fixing loss of earning power to an extent that is more than that of percentage of disability fixed by the

qualified medical practitioner - Whether the Commissioner has jurisdiction to fix a percentage of loss of earning capacity at variance with the

percentage of disability certified by the qualified medical practitioner?-Yes.

II (1994) ACC 233 (DB), Kerala High Court, New India Assurance Co., Ltd., and Anr. v. K. Abdullakutty and Ors. the relevant head notes of

which are as follows:

(i) Workmen's Compensation Act, 1923 - Section 4(1)(c)(ii) - Permanent disability and loss of earning capacity - Injuries to workmen - In some cases the percentage of disability stated whereas in some others not stated - Commissioner fixed higher percentage of loss of earning capacity than that certified by medical practitioner - Jurisdiction - Power of Commissioner - Whether the Commissioner alone charged with the duty of fixing the loss of earning capacity? Yes.

16. The learned Counsel appearing for the respondent argued that the claimant is continuing in service and his earning has not been affected due to the said accident. The Deputy Commissioner of Labour after well considering the case has given in his finding that due to the said accident, the claimant's promotion and salary has not been affected in any manner. As such, the Deputy Commissioner of Labour, rejected to claim petition and as such the order passed by the Deputy Commissioner is fair. In support of his contentions, the learned Counsel appearing for the respondent has cited the following Judgments made in

(2008) 7 MLJ 1052, Madras High Court, Branch Manager, National Insurance Company Ltd., Madurai v. P. Azhagarsami and Anr., the relevant head notes of which are as follows:

Workmen's Compensation Act (8 of 1923), Sections 2(1), 4(1), 4(i)(c)(ii), 20(3) - Assessment of loss of earning capacity - Doctor assessed disability as 57% - Commissioner assessed loss of earning capacity at 70% - Commissioner/Tribunal to assess loss of earning capacity on basis of evidence required u/s 2(1) and 4(1) - Commissioner appointed under the Act is a Tribunal and not a civil Court - Mandatory provisions to be followed as per Act - Disability certificate assessed by Doctor reveals only the percentage of disability and not the loss of earning capacity of the claimant - Assistance of an expert not obtained - Statutory mandate not followed - Assessment of loss of earning capacity at 70% liable to be set aside - Matter remitted back for fresh determination of the claim as per provisions - Civil Miscellaneous Appeal allowed.

A. Subramani Vs. The Management of Tamil Nadu State Transport Corporation (Coimbatore Division I) Ltd. and The Presiding Officer Labour Court, , the relevant head notes of which are as follows:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 (1 of 1996), Sections 72 and 47 - Benefit of

alternative employment - Claim for, resisted on ground that appellant/workman, having received compensation under the Workmen's

Compensation Act, he could not again claim alternative employment in terms of Section 47 of Disabilities Act - Held, by virtue of Section 72 of

Disabilities Act, provisions of Act are in addition to any other law for time being in force - As such, receipt of compensation under Workmen's

Compensation Act would not disentitle workman to get benefits u/s 47 of Disabilities Act.

17. Considering the facts and circumstances of the case, and after going through the order of the Deputy Commissioner of Labour and after hearing

arguments advanced by the learned Counsels on either sides and scrutiny of case laws cited, this Court is of the view that the claimant has

established his case before the Commissioner of Labour that he met with an accident in the course of his employment as a Masdoor under the

respondent's department. The appellant is a labour and he has to use his physical strength to do his work everyday. Immediately after the accident,

he was admitted in the hospital and underwent treatment, wherein surgery was done in his right thigh and steel plate fixed in the operated region.

As such, his physical strength has been affected and he has also sustained disability as per the evidence given by the Government Doctor.

18. The Commissioner of Labour was of the view that as the petitioner's earning capacity has not been reduced he is not entitled to get any

compensation under the Workmen's Compensation Act. This Court considers that this decision of Commissioner may appear to be correct legally

but this Court thinks otherwise. This Court is of the view that the appellant has received grievous injuries in the said accident in the course of his

employment under the respondent's department and should be compensated adequately for the loss of his physical strength. Accordingly, the

Order of the Deputy Commissioner of Labour passed in W.C. No. 163 of 1997, dated 03.12.2007 is set aside and the claim petition is allowed.

19. Therefore, this Court directs the respondent/The General Manager, Telecommunication Department, Coimbatore, to deposit the sum of Rs.

41,984/- together with interest at the rate of 12% per annum from the date of filing the claim petition till the date of payment of compensation, into

the credit of the W.C. No. 163 of 1997, on the file of the Workmen's Compensation Commissioner (Deputy Commissioner of Labour),

Coimbatore, within a period of four weeks, from the date of receipt of this Order.

20. As the accident happened in the year 1995, it is open to the appellant to withdraw the entire compensation amount, together with interest

thereon, after such deposit is made into the credit of the W.C. No. 163 of 1997, on the file of the Workmen's Compensation Commissioner

(Deputy Commissioner of Labour), Coimbatore, after filing necessary application, as per the procedures of Court.

21. In the result, the above Civil Miscellaneous Appeal is allowed and the Order dated 12.07.1999, in W.C. No. 163 of 1997, passed by the

Workmen's Compensation Commissioner (Deputy Commissioner of Labour), Coimbatore, is set aside. Consequently, connected miscellaneous

petition is closed. There is no order as to costs.