

(2013) 10 MAD CK 0187

Madras High Court

Case No: C.M.A. No. 981 of 2008

S. Saraswathi

APPELLANT

Vs

The Management of M/S. Sundar
Agencies

RESPONDENT

Date of Decision: Oct. 22, 2013

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

Bench: Single Bench

Advocate: M. Christopher, for the Appellant; V. Muthuvelan, for the Respondent

Final Decision: Partly Allowed

Judgement

C.S. Karnan, J.

The appellant had filed W.C. No. 4 of 2004, on the file of Deputy Commissioner of Labour, Coimbatore stating that she is employed with the 1st opposite party as a Machine Operator and she had been paid a sum of Rs. 3,000/- as monthly salary. On 12.01.2003, at about 11.15 a.m., while she was working in the opposite party's factory, the applicant's forefinger on her right hand was cut off when she was operating the machine. She was immediately admitted at Coimbatore Medical College Hospital, as inpatient. Hence, the claim has been levelled against the employer. The employer had filed a counter statement and resisted the claim petition. The respondent had denied that she was working in his factory as an employee and that a false claim had been filed by her in order to get wrongful gain. It was submitted that the applicant was not admitted at C.M.C. Hospital, Coimbatore. The applicant had created self serving documents and claimed the compensation on the strength of bogus documents. Further, the applicant had levelled a complaint after a delay of 4 months and 16 days from the date of alleged accident, which is as an after thought. Further, on the strength of F.I.R., the employee was not enquired.

2. On verifying the averments of both parties, the Deputy Commissioner of Labour had framed two issues namely (1) Whether the applicant is a "worker" as per the

Workmen's Compensation Act? Whether she had sustained injuries in the course of employment under the opposite party? and (2) What is the quantum of compensation to be awarded to the applicant? On the side of the applicant, the applicant was examined as PW1 and 5 documents were marked as Exhibits P1 to P5 namely Ex. P1-F.I.R.; Ex. P2-X-ray; Ex. P3-Disability Certificate; Ex. P4-Photo showing severed right hand finger; and Ex. P5-Final report of police. On the side of the opposite party, one witness was examined and the attendance register was marked as Ex. R1.

3. PW1 had adduced evidence that on 12.01.2003, at about 11.15 a.m., when she was operating the waste cotton machine, as per the instruction of the employer/opposite party, two of her fingers in her right hand was severed by the machine and her hand was crushed upto palm level due to which she had tainted. She deposed that her co-worker Dhanalakshmi had admitted her at C.M.C. Hospital, Coimbatore, wherein she had undergone treatment for a period of one month. She deposed that on 17.01.2003, a criminal case has been given and the same had been registered on 28.05.2003. PW1 further stated that she is aged about 33 years and she had been paid a sum of Rs. 3,000/- per month, as salary and that she had been working in the opposite party's factory for about 6 months.

4. The opposite party had been examined as RW1. RW1 had adduced evidence that the applicant did not work under him and that the day on which the alleged accident took place i.e. 12.01.2003, was a Sunday, which was a holiday. He deposed that regarding the alleged police complaint, the police had not made any enquiry with him. In order to prove his contentions, he had marked the factory's attendance register.

5. On considering the evidence of the witnesses and on scrutinising the documents and on perusing the written arguments submitted by the applicant and opposite party, the Deputy Commissioner of Labour dismissed the claim. Aggrieved by the said dismissal order, the applicant had filed the above appeal. The very competent counsel for the applicant argued that while the applicant was working as a machine operator and while she was operating the waste cotton machine on 12.01.2003 at about 11.15 a.m., two of her fingers of her right hand had been severed in the machine and that the said accident had occurred in the course of employment. It was submitted that the co-worker Dhanalakshmi took her to C.M.C. Hospital, wherein she underwent treatment for a period of one month. The authorised police officer had registered a criminal case in Cr. No. 520 of 2003 on his file, which is existing and it clearly reveals the mode of accident, place of accident and date of accident and time of accident. The employer had produced attendance register of the employees which is a self serving document and cannot be relied upon. The employer-employee relationship had been proved and the accident had happened during the course of her employment. In support of his contentions, medical records have been marked. Therefore, the compensation case is not a misconceived

one and it is a bonafide claim. Normally a stranger with an initiation to fraud would not file such a claim petition before a Court of law, in order to get wrongful gain.

6. The highly competent counsel for the respondent vehemently argued that the applicant was not an employee under the respondent herein. Further, the applicant's contention is that she met with an accident in the course of employment and that her co-worker Dhanalakshmi had admitted her in the C.M.C. Hospital, Coimbatore and therefore, the relevant witnesses namely Dhanalakshmi and the Doctor could have been examined by the applicant in order to prove her case and this had not been done. As per the sworn statement of the applicant, she had lodged a complaint on 17.01.2003 but the F.I.R. had been registered on 28.05.2003 and as such there is a delay in registering the F.I.R. The delay in filing the F.I.R. cannot be condoned since the applicant, as an after thought had levelled the said complaint. In order to prove the disability, Doctor has to be examined but this had also not been done. As such, the applicant had failed to prove her case before the Deputy Commissioner of Labour. Hence, the application was dismissed in an appropriate manner and as such there is no lacuna in the said impugned order. Therefore, the very competent counsel entreats the Court to dismiss the appeal.

7. On verifying the factual position of the case and arguments advanced by the learned counsel on either side and on perusing the dismissal order of the Deputy Commissioner of Labour, this Court is of the view that it is evident that the applicant had undergone treatment on 12.01.2003 at C.M.C. Hospital, as inpatient. In order to prove the said medical treatment, she had marked X-ray, Disability Certificate and Photo of her severed right hand fingers. Further, the F.I.R. and final report had been filed. In this case, employer cannot be punished since there is negligence on the part of the applicant. However, it is evident that the accident had occurred in the factory of the opposite party as per the evidence of PW1. Therefore, the opposite party is liable to pay compensation to the applicant. This Court is of the further view that a stranger would not approach a Court, with bogus documents, for wrongful gain, against any 3rd party/employer and going through a long legal process for adjudication. Hence, this Court is inclined to grant compensation of a sum of Rs. 50,000/- to the appellant/applicant, as it is found to be appropriate in the instant case, to meet out the ends of justice.

8. Therefore, this Court directs the respondent herein to deposit the said compensation of a sum of Rs. 50,000/- within a period of four weeks from the date of receipt of this order, before the Deputy Commissioner of Labour, failing which the respondent shall pay the said sum with interest at the rate of 12% per annum from the date of filing the claim till date of payment of compensation. After such a deposit having been made, it is open to the applicant to withdraw the said compensation amount, lying in the credit of W.C. No. 4 of 2004, on the file of Deputy Commissioner of Labour, Coimbatore, after filing a memo along with a copy of this order and after identification of the applicant by her counsel. In the result, the

above Civil Miscellaneous Appeal is partly allowed. Consequently, the Judgment and Decree, passed in W.C. No. 4 of 2004, dated 18.10.2007, on the file of the Commissioner for Workmen's Compensation is set aside. No costs.