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S. Saraswathi Vs The Management of M/S. Sundar Agencies

C.M.A. No. 981 of 2008

Court: Madras High Court

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.