S. Murugan Vs Madras Hard Tools Ltd.

Court: Madras High Court

Date of Decision: Dec. 9, 2013

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: S.N. Narasimhulu, for the Appellant; U.M. Ravichandran, for the Respondent

Final Decision: Dismissed

Judgement

S. Palanivelu, J.
The appeal is directed against the Award passed in W.C. No. 94 of 2001, dated 08.12.2003 on the file of the Deputy

Commissioner of Labour I, Chennai-6. The Appellant claims that he was working under the establishment of Opposite Party company. It is dealing

with iron rods etc., under the name and style of Madras Hard Tools Ltd., and he was working as cutting worker at their ware house and drawing

salary of Rs. 6000/- per month. It is the case of the appellant that on 9.11.1999 at about 11.00 a.m. while he was in the employment, he met with

an accident, that a iron rope was cut off and piece of iron rope hit his left eye deeply and due to which he lost the left eye and lot of blood came

out from the left eye and the co-workers took him to the Jayasri Hospitals and one Dr. Jayabalan gave first aid and removed the iron piece from

the left eye. Then he was admitted to the Government eye Hospital on 28.4.1999.

2. The defence of the respondent is total denial of applicant''s employment under them.

3. The following substantial questions of law have arisen for consideration in this Second Appeal:

1. Even though the appellant proved his case beyond doubt through P.W.2, one Mr. Srinivasan, the Manager of the respondent, dismissed the

claim petition is against law?

2. The date of injuries was proved by the appellant through documentary and oral evidence, by the learned Deputy Commissioner dismissed the

petition on the ground the injuries sustained before the accident is against Natural justice?

4. In order to prove his contention the appellant brought one Srinivasan P.W.2, who claims that he was working as Superintendent under Opposite

Party from 1995 to 2001. He would say that when he was working as Supervisor in the Opposite Party concern, the appellant was also working

there, that he was doing the work of cutting iron ropes and packing, that he suffered injury in his eye and that even though the applicant was not

attending to work, the company had given him Rs. 1500 per month. In the cross examination he says that he does not know anything about the

nature of work done by the appellant. Even the appellant has neither stated in the application nor in his evidence that he was getting Rs. 1500/- per

month from the company. The evidence of P.W.2 is not convincing and satisfactory. He has not given the particulars of nature of work allotted to

the applicant. If he were a supervisor of the company, he would have known to some extent about the nature of work of the applicant. The

evidence of P.W.2 does not support the case of the applicant.

5. P.W.3 Dr. Rajappa would say that he examined the applicant on 20.9.2003. He was informed by the applicant that he sustained injury in his

eye on 9.4.99 in a road traffic accident and from 28.4.99 till 4.5.99 he took treatment in Egmore Eye Hospital. He is of the opinion that the

applicant has lost the vision in the left eye and he assessed the permanent disability at 40%. Ex. P.5 is the Disability Certificate given by P.W.2. In

the cross examination it is seen that the appellant himself informed him that on 9.4.99 he met with an road traffic accident. He also says that in

Ex.A.1 discharge summary issued by the Government Hospital, the particulars as to the said road traffic accident was not mentioned. Further, he

says as per Serial No. 26 of Schedule I of Workmen Compensation Act, 1923, the disability is only 30%.

6. The director of respondent company, who examined himself as R.W.1, produced the Attendance Register and Wage Register maintained in his

premises for April 1999 which are Exs.R.3 and R.4 respectively. In these registers the name of the applicant was not found. R.W.1 also says that

the Inspector of Factory on 7.4.99 inspected the above said registers and signed. He denies that P.W.2 Srinivasan was supervisor in the company.

7. This Court has gone through the oral testimony of the witnesses and scrutinised the evidence. There is no scintilla of evidence to show that the

applicant was employed by the opposite party. There was no employer and employee relationship between the parties.

8. The learned counsel for the opposite party would draw the attention of this Court to Proviso 2 of Section 30 of Workmen Compensation Act

which reads as follows:

30. Appeals: (1) .... (a) to (e) omitted.

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other

than an order such as is referred to in clause (b) unless the amount in dispute in the appeal is not less than three hundred rupees.

9. He also relied upon a decision of this Court in The Oriental Insurance Co. Ltd. Vs. A.S. George Irudaya Selvaraj @ A.S. Selvaraj and

Gouthamchand Jain in support of his contention that if there was no substantial question of law, the appeal could not be maintained by the appellant

as per the above said provision. In this judgment K. Mohanram, J. has expressed is opinion that the question as to whether the first respondent

was driver employed under the second respondent is not a substantial question of law since the same has to be decided on the appreciation of

evidence available on record. I am in respectful agreement of the above said opinion.

10. In Management of Pachamalai Estate Vs. Smt. Mani, a Division Bench of this Court has held as follows:

An appeal u/s 30 of the Workmen Compensation Act can be considered only if there is a substantial question of law.

The above said decisions have been followed by this Court. On a careful scrutiny of the materials available in this case would show that there is no

substantial question of law to be determined.

11. In the above said circumstances, since there is no iota of materials to prove that the applicant was employed by the opposite party, the

appellant/applicant could not get any relief. The order passed by the Deputy Commissioner of Labour-1, Chennai-6 is confirmed. The appeal is

devoid of merits. The substantial questions of law are answered as indicated above. In fine, the Civil Miscellaneous Appeal is dismissed. No costs.