

Arjunan Vs. the Managing Director, Calac Private Limited and

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Court : Chennai

Decided On : Feb-04-2004

Reported in : AIR2004Mad231a; [2004(101)FLR804]; (2004)IILLJ634Mad;
(2004)1MLJ711

Judge : P. Sathasivam and ;S.R. Singaravelu, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 30

Appeal No. : Civil Miscellaneous Appeal No. 54 of 1996

Appellant : Arjunan

Respondent : The Managing Director, Calac Private Limited and ;The United India Insurance Company Ltd.

Advocate for Def. : Meenakshisundaram, Adv. For 1st respondent and ;N.B. Surekha, Adv. For 2nd respondent

Advocate for Pet/Ap. : R. Mralidharan, Adv.

Disposition : Appeal allowed

Judgement :

P. Sathasivam, J.

1. The applicant in W.C.No.308 of 1993 on the file of Deputy Commissioner of Labour, Madras against the dismissal of his application for compensation has filed the present appeal.

2. For convenience, we shall refer the parties as described before the Deputy Commissioner.

3. According to the applicant, he was employed by the first opposite party and on 26.05.1993, when he was engaged with his work near the Hot Boiler, he sustained injuries all over the body due to bursting of the Hot Boiler. Immediately, he was sent to Government Hospital, Cuddalore and thereafter, to Government General Hospital, Pondicherry. At the time of accident, he was 40 years old. The first opposite party, filed a counter statement, wherein it is stated that the applicant was engaged as a casual on a consolidated monthly wage of Rs.780/-. Due to bursting of Hot H2 O generator, the applicant sustained minor injuries and he was provided with initial treatment with Government General Hospital, Pondicherry and later he was transferred to Krishna Nursing Home at Cuddalore. In spite of their request, the applicant did not turn up to appear before Medical Board. They had already spent a sum of Rs.4,164.60 towards his medical treatment.

4. The second opposite party has filed a counter statement, wherein they denied the claim of the applicant.

5. Before the Deputy Commissioner, the applicant was examined as AW.1 and also examined Dr. Angamuthu as AW.2 besides marking Exs.A.1 to A.5 in support of his claim. On behalf of the opposite parties, there was no oral evidence, but the first opposite party filed Exs.R.1 to R.7 with the consent of other party. The Deputy Commissioner, after considering the materials placed and after finding that the change of colour in the skin is not a schedule injury prescribed in the Workmen's Compensation Act, 1923 (in short 'the Act'), dismissed the said application. Questioning the same, the applicant has filed the present appeal.

6. Heard the learned counsel for the appellant as well as the respondents.

7. The point for consideration in this appeal is, whether the applicant has sustained injuries in the course of his employment with first opposite party and entitled any compensation?

8. A perusal of the materials placed, particularly produced on the side of the first opposite party relating to expenses spent for the injuries at the hospitals (Exs.R.2 to R.5) show that the applicant was engaged as a casual with them and in the course of his employment he sustained burn injuries due to bursting of H2 O generator on 26.05.1993, accordingly, the applicant is entitled to claim compensation under the provisions of Workmen's Compensation Act.

9. Though the second opposite party has filed a counter statement, in the light of the fact that the first opposite party produced insurance policy, which has been marked as Ex.R.1, which covers the payment under Workmen's Compensation Act, we hold that the second opposite party is liable to pay compensation to be fixed.

10. Coming to the quantum of compensation, as said earlier, the applicant himself was examined as AW.1. In his oral evidence, he explained the nature of burn injuries, treatment details which he had taken at Pondicherry as well as at Cuddalore. He also asserted that after the burn injuries and even after treatment, he is not able to do the same work what he was doing earlier. As a matter of fact, he asserted in his evidence that he is not employed elsewhere. Copy of the complaint has been marked as Ex.A.1; disability slip issued by Pondicherry Government General Hospital as Ex.A.2; Wound certificate from Cuddalore Government Hospital as Ex.A.3. Apart from the evidence of AW.1, Dr. Angamuthu, who assessed the disability of the applicant was examined as AW.2. On examination and after verifying the medical records produced by the applicant, AW.2 has assessed the disability of the injured - applicant to the extent of 30%. The disability certificate has been marked as Ex.A.5. The Deputy Commissioner, after analysing the evidence of AW.2 and the contents of Ex.A.5, after observing that inasmuch as the disability certificate was issued only on 02.03.1995, whereas the incident occurred on 26.05.1993, refused to rely on the evidence of AW.2 and his certificate Ex.A.5. The Deputy Commissioner also observed that change of

colour in the skin is not a schedule injury prescribed under the Act and with these reasons, dismissed the application of the applicant.

11. In the light of the said conclusion, we have verified the evidence of AW.1, AW.2, various documents produced from Government Hospital at Pondicherry and Cuddalore and the disability certificate Ex.A.5. On going through all these materials and in the light of the assertion of AW.1 in his evidence, we are unable to accept the view expressed by the Deputy Commissioner. We are satisfied that due to burn injuries sustained on 26.05.1993, which was in the course of his employment, skin crafting was done at Government General Hospital, Pondicherry. The Doctor AW.2 on verification of all the medical documents and after examining AW.1, assessed the disability of the injured - applicant to the extent of 30%. Merely because AW.2 has examined and issued disability certificate after two years from the date of occurrence, his evidence and certificate cannot be brushed aside. Likewise, the conclusion of the Deputy Commissioner that change of colour in the skin is not a schedule injury prescribed in the Act and the applicant is not entitled to receive any compensation, is not acceptable. Though it is not a scheduled injury, as per Section 4(1)

(c) (ii) of the Workmen's Compensation Act, 1923, depending on the loss of earning capacity and the evidence, he is entitled reasonable compensation. The said provision reads as under:

'4. Amount of Compensation:

1. (a)....

(b)....

(c) (i)

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury. '

12. A reading of the above provision makes it clear that even for the injury not specified in Schedule I, if there is any evidence regarding permanent disablement either total or partial or there is any loss of earning capacity due to the injury / injuries, the applicant is entitled compensation under the Workmen's Compensation Act from the employer concerned. In our case, we have already referred to the statement of AW.1 and his assertion that because of the injuries, even after treatment, he could not serve employment anywhere. In the light of his evidence coupled with the evidence of AW.2 Doctor, disability certificate Ex.A.5, we are satisfied that the applicant sustained loss of earning capacity and entitled compensation.

13. It is seen from his evidence that he was getting monthly income of Rs.780/-. As per Ex.A.5 disability certificate, the disability has been assessed at 30%. Considering the relevant factor as per the provisions of the Act, we calculate the compensation in the following manner.

'Monthly income ... Rs.780/-

Relevant Factor184-17

Disability30 percent

60 percent of the monthly income as

$780 \times 184.17 \times 30/100 \times 60/100 = \text{Rs.}25,857.64'$

The applicant is entitled a compensation of Rs.25,857.64 and also entitled interest at the rate of 6% per annum for the said amount from 30 days after the date of the accident i.e.,26.05.1993 till the date of deposit. The civil miscellaneous appeal is allowed to this extent. No costs.

In view of policy of Insurance - Ex.R.1, the second opposite party - United India Insurance Company, Cuddalore is directed to deposit the said amount (Rs.25,857.64) within a period of eight weeks from the date of receipt of a copy of this order and on such deposit, the applicant is permitted to withdraw the entire amount.

