

Chengun V. v Mindafrica Broker & Consultancy Ltd

2023 IND 75

Cause Number 390/22

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil side)

In the matter of:

Ms. Vydiamba Chengun

Plaintiff

v.

Mindafrica Broker & Consultancy Ltd

Defendant

Judgment

In this Plaintiff with Summons, Plaintiff has averred the following-

Plaintiff was in the continuous employment of Defendant as Marketing and Underwriting since 1.9.2014. She was employed on a 5-day week basis. She was remunerated at monthly intervals at the terminal basic rate of Rs 10,985 per month and her average monthly remuneration amounted to Rs 16,775.42.

She last worked on 30.9.2021. Defendant failed to remunerate her full wages, travelling, commission and end of year bonus for period July 2019 to August 2021 which amounted to Rs 312,276. By failing to remunerate her, she considers that, Defendant has terminated her employment without notice and without any justification on 30.9.2021. Defendant has also failed to pay her the end of year bonus for year 2021.

Therefore, Plaintiff is claiming from Defendant the sum of Rs.693,767.85 allegedly being comprised of-

- (a) One month's remuneration as indemnity in lieu of notice: Rs 16,775.45.
- (b) Severance allowance for 85 months' continuous employment (Rs 16,775.42 x 3 months x 85/12 years): Rs 356,477.68.
- (c) Outstanding wages, travelling, commission and end of year bonus for period 1.7.2019 to 30.9.2021: Rs 312,276.00.
- (d) End of year bonus 2021 (Rs 10,985 x 9/12): Rs 8,238.75.

Defendant, on the other hand, not only did not file any plea but has also left default on the trial day in spite of the fact that it was duly summoned to appear. In line with Section 7(1) of the Industrial Court Act 1973, default judgments are governed by **Section 16 (1) of the District and Intermediate Courts (Civil Jurisdiction) Act** as reproduced below:

"Where on the day so fixed in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or does not sufficiently excuse his absence, the Court, upon proof of the service of the summons, may give judgment in terms of the plaint or, where the cause includes a claim for substantial damages, proceed to the hearing of the witnesses and trial of the cause on the part of the plaintiff only, and in either case, the judgment shall, subject to subsection (2), be as if both parties had attended." (emphasis added)

Plaintiff testified in Court as per her above averments. She produced a copy of her pay slip for the month of January 2021 as per Doc. P1 and a letter dated 5.3.2021 emanating from the Director of Defendant duly signed by Mr. Ashutosh Kumarsingh Servansingh, supporting the amount claimed as per Doc. P2. She has also highlighted that her contract of employment was a verbal one. Besides, she has claimed travel expenses for two days to attend Court in the sum of Rs 280.

I have given due consideration to all the evidence put forward before me. The wholesale unchallenged testimony of Plaintiff in the absence of Defendant is compatible with the

documentary evidence produced namely her pay slip and the acknowledgment of short payment of remuneration due to her as per Docs. P1 & P2 respectively emanating from Defendant. Thus, I accept the evidence led by the Plaintiff as being plausible, reliable and soundly grounded in law (*vide - Hurnam D. v. Bholah K. B. & Anor. [2009 SCJ 265]*).

For the reasons given above, I find that the case for the Plaintiff has been proved on a balance of probabilities. I, accordingly, order Defendant to pay to Plaintiff the sum of Rs.693,767.85 representing one month's remuneration as indemnity in lieu of notice: Rs 16,775.45, severance allowance for 85 months' continuous employment (Rs 16,775.42 x 3 months x 85/12 years): Rs 356,477.68 with interest at the rate of 12% per annum on the amount of severance allowance payable from the date of termination of agreement to the date of payment, [outstanding wages, travelling, commission and end of year bonus for period 1.7.2019 to 30.9.2021: Rs 312,276.00 and end of year bonus 2021 (Rs 10,985 x 9/12): Rs 8,238.75] with interest at the rate of 12% per annum on the amount of remuneration due from the date of non-payment to the date of payment. I also order Defendant to pay to Plaintiff 2 days' travel expenses for attending Court in the sum of Rs 280.

S.D. Bonomally (Mrs.) (Vice President)

5.10.23.

