



C.M.A.(MD).No.1299 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.02.2024

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THE HON'BLE MR.JUSTICE P. DHANABAL

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and

M.P.(MD).No.1 of 2013

The Divisional Manager,
M/s.Iffco Tokio General Insurance Company Ltd.,
No.10-C, T.B.Road,
Mahaboobpalayam, Madurai – 10. ... Appellant/Respondent No.2

Vs.

1.Vellathai ... Respondent/Petitioner

2.S.Kanagaraj ... Respondent/Respondent No.1

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, to set aside the award dated 20.03.2013 made in W.C.No.23 of 2008 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award, dated 20.03.2013 made in W.C.No.23 of 2008



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on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai, wherein the first respondent herein has filed a petition before the Tribunal seeking compensation for the injuries sustained by her while she was under the employment of second respondent. The Tribunal has awarded Rs.2,16,354/- towards compensation. As against the order passed by the Tribunal, the present appeal has been preferred by the second respondent/Insurance Company by challenging the liability.

2. According to the first respondent/petitioner, she was working as Load Woman under the second respondent's vehicle bearing Registration No.TN-58 L 0745. While so, on 08.10.2007 at about 06.00 a.m., when she was proceeding in the vehicle from Madurai to Thirumangalam Main Road, near Thirunagar Sitalakshmi Mill, the vehicle met with an accident and thereby, the petitioner sustained injuries and due to the injuries she got permanent disablements. She was aged about 53 years on the date of accident and she earned Rs.5,000/- per month. The vehicle was insured with appellant/second respondent insurance company and thereby, both the second respondent and the appellant are liable to pay the compensation.

3. According to the appellant/second respondent, the averments made in



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the claim petition are all false and the first respondent/petitioner is none other than the mother of the second respondent/first respondent and they are blood relatives and there is no relationship between them as employee and employer. The petitioner was travelling as a co-passenger and the second respondent only drove the vehicle. Further there is a delay in filing the complaint. The complaint has been given only to get compensation. Therefore, the appellant/second respondent is not liable to pay any compensation to the first respondent/petitioner. The accident has not occurred during the course of employment. The petitioner did not sustain any permanent disability. Therefore, the petition is liable to be dismissed.

4.Before the tribunal on the side of the first respondent/petitioner she examined PW1 and PW2 and marked Ex.P1 to Ex.P8. On the side of the respondents they examined RW1 and RW2 and marked Ex.R1 and Ex.R2.

5.After perusing the records and evidence adduced on either side, the Deputy Commissioner of Labour passed the award for a sum of Rs.2,16,354/- by directing the appellant/second respondent/insurance company to pay the above said amount. As against the order passed by the Deputy Commissioner of Labour, the present appeal has been preferred.



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6.The learned counsel appearing for the appellant/insurance company contended that the first respondent/petitioner is none other than the mother of the second respondent/first respondent, who is the owner of the vehicle and the accident was not occurred during the course of employment and the first respondent/petitioner travelled in the vehicle as one of the passenger and therefore, there is no relationship as employee and employer between the first respondent/petitioner and the second respondent/first respondent. But, the Deputy Commissioner of Labour, without considering the same awarded compensation. The mother of the second respondent/first respondent cannot be an employee under his son and only to get compensation they had given the complaint as if the petitioner has travelled as a Load Woman. The Deputy Commissioner of Labour without considering the same, erroneously awarded compensation. Therefore, the order passed by the Deputy Commissioner of Labour is liable to be set aside by allowing this appeal.

7.No representation for the respondents. Already ample chance has been given to them. But none appears. Hence, this Court proceeded to decide the case based on the arguments of the appellant.



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8.This Court heard both sides and perused the documents.

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9.Point for determination in this appeal is that whether any substantial question of law is involved in this case and the appeal is to be allowed or not?

10.In this case the appellant/second respondent denied the relationship between the first respondent/petitioner and the second respondent/first respondent as employee and employer and they were blood relatives. The first respondent/petitioner is none other than the mother of the second respondent/first respondent and the second respondent/first respondent only drove the vehicle. In that vehicle the first respondent/petitioner travelled as a co-passenger and only to get claim, the complaint has been given stating that she was travelling as a load woman in the vehicle and on that basis FIR was also registered.

11.The main contention raised by the appellant/second respondent is that there is no relationship between the first respondent/petitioner and the second respondent/first respondent as employee and employer. But the first respondent/petitioner was examined as PW1 and deposed in the Tribunal that she sustained injuries when she was working as load woman in the second



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respondent's/first respondent's vehicle. On the side of the respondents, they examined RW1, who is the Investigating Officer of the appellant/second respondent company and also examined RW2, who is the Manager of the second respondent company. Those witness are not the eye witnesses to the occurrence and the second respondent failed to adduce evidence to substantiate their contention.

12. There is no legal bar to the mother to employ under the son. Moreover, the petitioner's side evidence shows that she was working under the second respondent/first respondent as load woman and while she was in the course of employment under the second respondent/first respondent sustained injuries. The Tribunal also after taking into consideration the evidence adduced on either side came to a conclusion that the petitioner was working under the first respondent and there was a relationship as employee and employer between the 1st respondent and 2nd respondent and she sustained injuries during the course of employment. There is no dispute that the vehicle which involved in the accident was insured with the Appellant/second respondent on the date of accident. As this Court already held that the 1st respondent/petitioner proved the relationship as employer and employee and the vehicle was insured with Appellant/2nd respondent, he is liable to pay compensation.



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13.A careful perusal of oral and documentary evidences adduced on both sides and the relevant records, this Court is of the view that there is no substantial question of law involved in this case and thereby, the order passed by the Tribunal does not suffer any illegality or irregularity.

14.In the result, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.02.2024

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To

- 1.The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour), Madurai.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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P. DHANABAL.J.,

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