



C.M.A.(MD) No.868 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	12.08.2024
Pronounced on	16.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.868 of 2010

The Divisional Manager,
M/s.National Insurance Company Ltd.,
No.3, North Veli Street,
Madurai-1.

... Appellant

Vs.

1.P.Senthilkumar
S/o.A.Palanimuthu

2.The Management,
M/s.Rajalakshmi Agencies,
Plot No.535, K.K.Nagar,
Madurai-1.

... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 16.03.2017 passed in W.C.No.428 of 2002 on the file of the Commissioner for Workmen's Compensation, Madurai.

For Appellant : Mr.J.S.Murali

For R1 : No appearance



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For R2 : No appearance

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J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the award dated 16.03.2017 passed by the Commissioner for Workmen's Compensation, Madurai in W.C.No.428 of 2002.

2. The first respondent had filed a claim petition before the Commissioner for Workmen's Compensation in W.C.No.428 of 2002 stating that he was employed as an auto driver under the second respondent and during the course of employment, on 12.09.2002, while he was riding the autorickshaw and was negotiating a bend in the hills, the autorickshaw went out of his control and capsized, as a result of which, he sustained grievous injuries.

3. The second respondent, the owner of the autorickshaw, filed counter statement before the Commissioner stating that the Autorickshaw's Registration No.TN-59-Y-8856 is not correct; that the first respondent was only a rider of the autorickshaw bearing Registration No.TN-59-J-8852 which belonged to him; and that he was working on a contract basis.



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4. The appellant Insurance Company also filed the counter statement before the Commissioner stating that the averments made in the claim petition were false; that the vehicle bearing Registration No.TN-59-Y-8856 was not involved in the accident; and that there was no employer-employee relationship between the first and second respondents herein.

5. The first respondent herein filed an application before the Commissioner seeking amendment in his claim petition as regards the registration number of the autorickshaw. He had stated that by mistake, he had mentioned the registration number of the autorickshaw as “TN-59-Y-8856” instead of “TN-59-J-8852”. The said application was allowed by the Commissioner and it had become final as there was no challenge to it.

6. In the meanwhile, the appellant filed a petition for referring the matter to the CBCID since they suspected that there was foul play in the claim petition. The said petition was allowed. The CBCID conducted the investigation and closed the case as 'Action was dropped'.

7. The first respondent before the Commissioner examined himself as P.W.1 and Doctor who treated him as P.W.2 and marked Exs.A1 to



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A12 and Exs.C1 and C2. The appellant Insurance Company examined two witnesses and marked four documents on their side.

8. The Commissioner after taking into consideration the oral and documentary evidence held that the first respondent was earning a sum of Rs.2,086/- per month and assessed the functional disability of the first respondent at 37% based on the Disability Certificate issued by the Doctor and awarded a total compensation of Rs.93,387/- to the first respondent.

9. The learned counsel for the appellant Insurance Company submitted that the second respondent who is the owner of the autorickshaw initially stated that the registration number of the autorickshaw mentioned by the first respondent in the claim petition was erroneous and further stated that the first respondent was only working on a contract basis and was riding another autorickshaw bearing Registration No.TN-59-J-8852, which enabled the first respondent to file amendment petition; and that the entire exercise is an afterthought and was made only with a view to claim compensation from the appellant Insurance Company. The learned counsel for the appellant therefore submitted that the award of the Commissioner deserves to be set aside.



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10. Although notice has been served to the first respondent and the learned counsel Mr.S.Ramesh @ Ramaiah had entered appearance and appeared on the previous hearings, there is no representation on the date of hearing. Further, though notice has also been served to the second respondent-Company and its name is printed in the cause list, there is no representation for the second respondent.

11. This Court while admitting this appeal framed the following substantial questions of law:-

- (1) Whether the first respondent herein is a workman and is entitled to maintain compensation application under the provisions of the Workmen's Compensation Act, 1923?
- (2) Whether the Commissioner for Workmen's Compensation is right in holding that the first respondent herein sustained injuries on account of and in the course of his employment under the second respondent herein in the absence of proof?

12. The main submission of the learned counsel for the appellant is that the first respondent had not established the employer-employee relationship between the first and second respondents; that the second respondent had made contradictory statements in the counter statement



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filed before the Commissioner; that no document was produced to substantiate the employment under the second respondent; and that therefore the Commissioner erred in awarding the compensation.

13. This Court finds that the first respondent had examined himself as P.W.1, the Doctor as P.W.2 and marked documents to prove the treatment taken by him. Ex.A1 is the copy of the FIR, in which, the first respondent had explained about the nature of the accident and stated how he fell down from the autorickshaw. However, the registration number of the autorickshaw was wrongly mentioned in the said FIR. Even in the claim petition, he had mentioned the wrong registration number of the autorickshaw. Thereafter, the first respondent had filed an amendment petition to rectify the error and same was allowed by the Commissioner. There is no challenge to the said order passed by the Commissioner permitting the amendment, as stated earlier. Likewise, as stated earlier, the CBCID in the report dated 05.03.2007 found that there is no foul play and closed the case as 'Action was dropped'.

14. However, the second respondent had filed counter statement before the Commissioner stating that the first respondent was working as



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an auto driver and was riding the autorickshaw bearing Registration No.TN-59-J-8852. Therefore, the employer-employee relationship between the first and second respondents has been established before the Commissioner. The evidence would therefore clearly establish the relationship. Hence, the finding of the Commissioner holding that the first respondent was employed under the second respondent and the accident took place during the course of his employment is in accordance with law.

15. As regards the quantum of compensation, the appellant is unable to point out any infirmity as the loss of earning capacity fixed at 37% is based on the evidence of P.W.2 Doctor and his Certificate (Ex.A7). The wages fixed by the Commissioner based on the minimum wages prescribed for auto drivers is also in accordance with law. For all reasons, this Court is of the view that the Commissioner had passed the impugned award in accordance with law.

16. The substantial questions of law are answered accordingly. This Civil Miscellaneous Appeal is liable to be dismissed.



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17. The appellant Insurance Company is directed to deposit the compensation together with the interest as awarded by the Commissioner, less the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this Judgment.

18. On such deposit, the first respondent is permitted to withdraw the compensation and interest, less the amount already withdrawn if any, by filing appropriate application before the Commissioner.

19. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

16.08.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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- 1.The Commissioner for Workmen's Compensation,
Madurai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

JEN

Pre-Delivery Judgment made
in
C.M.A.(MD) No.868 of 2010

16.08.2024