

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 19.8.2016

CORAM

THE HON'BLE JUSTICE T. MATHIVANAN

C.M.A. No. 1063/2015

M/s. United India Insurance Company Ltd.
No.19, Aandiyappa Gramani Street
Royapuram
Chennai- 600 013

Appellant/
2nd respondent

Vs.

1. K. Mariyappan @Mari ... 1st Respondent/Petitioner
2.K.Jayakumar ... 2nd Respondent/1st Respondent

Prayer : To set aside the award dt. 6.12.2014 and made in the claim petition in E.C. No. 114 of 2012 on the file of the Learned Deputy Commissioner of Labour - I, Chennai, this Memorandum of Civil Appeal is filed.

For Petitioner : Mr. J. Michael Viswasam
For 1st Respondent : Mr. T. G. Ravichandran,
For 2nd Respondent : not appeared

ORDER

Invoking the provisions of Section 30 of the Employee Compensation Act 1923, this Memorandum of Civil Appeal is filed to set aside the award dt. 6.12.2014 and made in the claim petition in E.C. No. 114 of 2012 on the file of the Learned Deputy Commissioner of Labour - I, Chennai.

2. Heard the respective counsels for the Appellant as well as for the 1st Respondent. Despite service of notice on the 2nd Respondent / 1st Opposite Party he has not chosen to appear before this Court.

3. This Appeal came to be admitted on the following three substantial questions of law:-

'1. Whether the findings of the Learned Deputy Commissioner of Labour with regard to the alleged employment of the 1st Respondent as an 'Auto Driver' under the II Respondent and that the alleged road traffic accident took place on 10.4.2011 during the course of and out of the employment can be sustained, when the oral evidence of the 1st Respondent is contrary to the documentary evidence marked as Ex.P1?

2. Whether the Learned Deputy Commissioner of Labour was correct in determining the loss of earning capacity of the 1st Respondent at 60%, when the medical practitioner who has examined as Aw2 had not assessed the functional disablement and the resultant loss of earning capacity in terms of Seduction 4 (1) (c) (ii) of the WC Act?

3. Whether the determination made by the Learned Deputy Commissioner with regard to loss of earning capacity suffered by the 1st Respondent at 60% in respect of fracture of both bones of left leg can be sustained, when the loss of earning capacity in case of amputation of lower limb below knee itself is fixed at 50% under part II of Schedule I of the Employees Compensation Act, 1923?'

4. It is manifested from the records that the 1st Respondent herein had moved the Commissioner of Workmen Compensation with a claim petition in E.C. No. 114/2012 seeking compensation for the injury sustained by him while he was in the employment of the 2nd Respondent / 1st Opposite Party on 10.4.2011. While the 2nd Respondent / 1st Opposite Party remained exparty, the 2nd Respondent who is the Appellant herein had alone contested the claim. However the Deputy Commissioner of Labour-I, Chennai on appreciation of the evidences had passed an award of Rs. 4,38,116/- directing the Appellant Insurance Company to deposit this amount in the name of Commissioner of labour I within 30 days from the date of receipt of copy of this award, failing which the award amount shall carry 12% interest 30 days after the date of accident.

5. Being aggrieved by the impugned award dt. 6.12.2014 the Appellant Insurance Company being the 2nd Respondent in the claim petition stands before this court with this appeal.

6. It is revealed from the records that on 30.4.2011 at about 3.15 p.m. while the 1st Respondent / Claimant was on duty as a driver in the auto bearing Registration No. TN 04 AF - 3019 it was turned turtle and on account of this reason he had sustained fracture over his left leg coupled with multiple injuries on all over his body. According to the 1st Respondent / Claimant he had been getting treatment as impatient from 10.4.2011 to 13.5.2011 and he had also undergone a surgery on 8.5.2011. He, therefore claiming compensation, had filed the claim petition before the Deputy Commissioner of Labour - I, Chennai.

7. What the Appellant Insurance Company would contend is that there was no employer and employee relationship between the applicant and the 2nd Respondent / 1st opposite party. The applicant had nothing to do with the vehicle bearing registration No. TN 04- AF - 3019. According to the Appellant Insurance Company the 1st Respondent /Claimant was a professional

mechanic and not a driver. The auto was entrusted with him for carrying out certain repairs. After completion of repairing work, the 1st Respondent / Claimant had taken the auto for a test drive. While so the accident was taken place for which neither the owner of the vehicle nor its insurer could be held liable. However his contention was turned down by the Deputy Commissioner of Labour - I, Chennai. This court had virtually gone through the evidences available on record. It is pertinent to note here that totally 12 Exhibits were marked on behalf of 1st Respondent / Claimant. On perusal of the entire evidences particularly documentary evidences this court finds that no reference is available to show that the Claimant was employed as a driver by the 2nd Respondent/ 1st opposite party.

8. When the relationship of employer and employee is questioned it is the responsibility of the Claimant to dispel this doubt. On coming to instant case on hand the 1st Respondent / Claimant has miserably failed to substantiate his case. When there is lack of evidence to show that the Applicant was working as a driver under the 1st opposite party, the question of entitlement to get the compensation would be looming large. The evidence of 1st Respondent / Claimant seems to be contrary to the averments of Ex. P1-First Information Report.

9. Further without any basis, the Deputy Commissioner of Labour - I, Chennai had concluded that the 1st Respondent / Claimant had lost his earning capacity to the extent of 60%. In the absence of adequate evidence on the part of the 1st Respondent / Claimant to substantiate or to prove his claim, the presumption is that in order to get unlawful enrichment he had opted the crooke method of filing this claim petition claiming huge compensation which cannot be allowed and if it is done so, it may pave way for abusing the process of court.

10. All the three substantial questions of law have accordingly been answered in favour of the Appellant and against the 1st Respondent / Claimant.

11. In the result appeal is allowed. However the impugned award dt. 6.12.2014 and made in E.C.No.114/2012 on the file of the Deputy Commissioner of Labour - I, Chennai is set aside and the claim petition in E.C. No. 114/2012 is dismissed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

TO

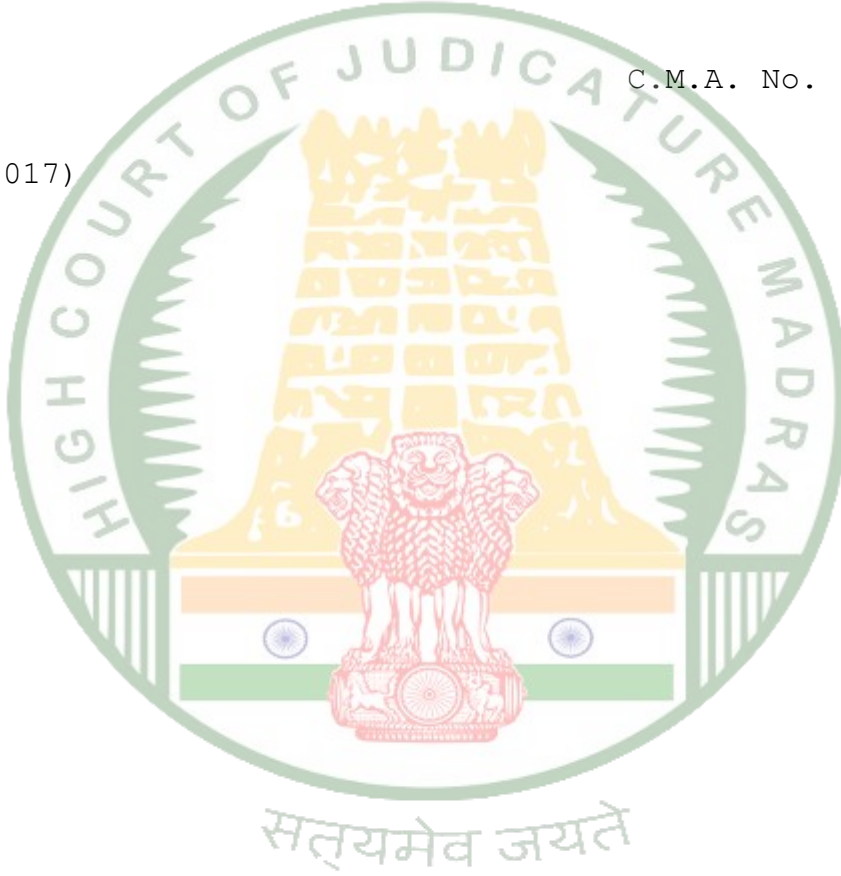
1. THE DEPUTY COMMISSINOR OF LABOUR-1,
CHENNAI.
2. THE SECTION OFFICER,
V.R. SECTION, HIGH COURT,
MADRAS.

+1cc to Mr. T. G. Ravichandran, Advocate, S.R.No. 47434/17

+1cc to Mr. J. Michael Viswasam, Advocate, S.R.No. 47430/17

C.M.A. No. 1063/2015

GP(CO)
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