

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.Nos.593 & 594 of 2009

Shanmugam .. Appellant in CMA.593 of 2009

Arumugam .. Appellant in CMA.594 of 2009

Vs.

1. R.Venkatesan

2. N.Arumugam

3. The National Insurance Co. Ltd.,
3, Middleton Street, P.O.No.9229,
Kolkata-700 701. ... Respondents in CMA.593 of
2009

1. R.Venkatesan

2. N.Shanmugam

3. The National Insurance Co. Ltd.,
3, Middleton Street, P.O.No.9229,
Kolkata-700 701. ... Respondents in CMA.594 of 2009

Prayer in both C.M.As: Civil Miscellaneous Appeal filed under
Section 30 of the Workmen's Compensation Act, 1923 against the
award dated 25.04.2007 passed by the Commissioner for Workmen's
Compensation-II [Deputy Commissioner of Labour-II, Chennai] in
W.C.No.16 of 2006.

For Appellant : Mr.Thirumaran
(in both CMAs.)

For R1 : Mr.S.T.Varadarajulu
(in both CMAs.)

For R2 :No Appearance

For R3 : Mr.R.Ravichandran
(in both CMAs.)

COMMON JUDGMENT

These appeals are filed respectively by the first and second respondents in W.C.No.16 of 2006 before the Deputy Commissioner of Labour-II, Chennai. The claimant was one Venkatesan.

2. On 01.03.2005 at about midnight, it is alleged that a man was ran over by a lorry belonging to the first respondent [the appellant in C.M.A.No.593 of 2009], which is insured with the National Insurance Company Limited [the third respondent in both the appeals], as a result of which, the claimant suffered fracture to his right leg. He invoked the jurisdiction of the Commissioner under Workmen's Compensation Act and sought a compensation of Rs.6,00,000/-, whereas the Commissioner has passed an award for Rs.1,65,530/- payable with interest at 12% per annum.

3. The learned counsel who appeared for both the appellants in both the appeals, contended that in his petition the claimant has alleged that he was working as a cleaner in the lorry of the first respondent [the appellant in C.M.A.No.593 of 2009] and also as a mechanic under the second respondent [the appellant in C.M.A.No.594 of 2009]. However, when in Ext.P-1 FIR which was registered at his instance, he described himself as working in M/s.Thirumurugan Auto Workshop belonging to the appellant in C.M.A.No.594 of 2009, and went on to improve his version his evidence when he deposed that the owner of Thirumurugan Auto Works was one N.Shanmugam, whereas the name of the appellant in CMA 594/2009 is Arumugam. What would be evident is that he has not been able to establish that he is working either under the owner of the lorry or in the business establishment of the appellant in C.M.A.No.594 of 2009, and since the employer-employee relationship has not been established satisfactorily, both the alleged employees of the claimant shall not be fastened with the liability and in the impugned order, not only the liability was fixed at the amount stated but it was also equally apportioned between both the appellants, who are otherwise brothers.

4. Before the Deputy Commissioner under the Workmen's Compensation Act, both the brothers, who now challenge the order passed therein, remained ex-parte.

5. Irrespective of under whom the claimant was working, the fact remains that there was an accident involving the lorry of the first respondent [the appellant in C.M.A.No.593 of 2009] and the same was insured with the third respondent/Insurance

Company. It is also an indisputable fact that the claimant has suffered injury. There is no dispute as to the quantum of compensation payable and the only interest of the claimant is that he be paid just and fair compensation. This Court therefore converts the C.M.A. filed under Section 30 of the Workmen's Compensation Act to an appeal filed under Motor Vehicles Act. If the claim is treated as one under MV Act, then it is unnecessary to decide the question of employer-employee relationship as the objective of the Act would be served as long as fair compensation is paid. Accordingly, the compensation determined is payable by the owner and the insurance company of the lorry in question. Learned counsel for the Insurance Company was also heard in the matter.

6. To conclude, the appellant in C.M.A.No.593 of 2009 and the Insurance Company are equally liable to pay compensation to the first respondent/claimant. Accordingly, C.M.A.No.593 of 2009 is dismissed and the 50% liability fastened on it by the impugned order was enhanced to 100%. The appellant in C.M.A.No.594 of 2009 is absolved of the liability to pay compensation and accordingly C.M.A.No.594 of 2009 is allowed. No costs. It is stated that the appellant in C.M.A.No.594 of 2009 has made statutory deposit of his share of the award amount and he is permitted to withdraw the same. The Insurance Company has to deposit the balance 50% within four weeks from the date of receipt of a copy of this judgment and if the appellant in C.M.A.No.593 of 2009 has a right to recover that the amount deposited from the Insurance Company based on the policy, it can so obtain it by resorting to any independent proceedings.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To:

1. The Deputy Commissioner of Labour-II,
Chennai.

2. The Section Officer, V.R.Section,
High Court, Madras.

+2cc to Mr.A.Thirumaran, Advocate Sr.73857 & 73858
+2cc to Mr.R.Ravichandran, Advocate Sr.73474 & 73475
+2cc to Mr.S.T.Varadarajulu, Advocate Sr.73343

C.M.A.Nos.593 & 594 of 2009

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srg 21/2/2017