

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 19.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

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C.M.A(MD)No.159 of 2016**and****C.M.P(MD)No.2518 of 2016**

T.Rajkumar ... Appellant/1st Respondent

Vs.

1.E.Senthilkumar ... 1st Respondent/Appellant

2.A.Suresh ... 2nd Respondent/
2nd Respondent

PRAYER: Appeal filed under Section 3o of Workmen's Compensation Act, against the Order of the Workmen's Compensation Commissioner-cum-Deputy Commissioner of Labour, Dindigul dated 21.09.2015 in the case W.C.No.146 of 2000.

For Appellant : Mr.S.Karthik

For Respondents : Mr.V.Pasumpon for R1
Mrs.Rajeswari for
Mrs.S.Srimiathy for R2**JUDGMENT**

This Civil Miscellaneous Appeal has been preferred by the employer against the award of Rs.91,300/- (Rupees Ninety One Thousand Three Hundred only) for the injuries sustained by the first respondent in the accident occurred on 29.11.1998 during the course of and out of employment under the appellant. Therefore, the claim was petition was filed before the Deputy Commissioner for Workmen's Compensation, Dindigul.

2. On contest, the Commissioner found that the second respondent herein is the employer and the accident occurred during the course of employment and out of employment and awarded a sum of Rs.91,300/- (Rupees Ninety One Thousand Three Hundred only) against the first respondent on 08.04.2002.

3. The said award is being challenged before this Court in
<https://hcservices.ecourts.gov.in/hcservices/>
C.M.A. (MD) No.1419 of 2002, making the second respondent as well as the Branch Manager, National Insurance Company Limited, Bodi,



Theni District, also as a party stating that a petition was filed before the Workmen Compensation Commissioner, to make the second respondent as well as the Insurance Company as a party and the said application has not been ordered.

4. While hearing the said appeal, it was brought to the notice of this Court that the impleading petition was not disposed of and without disposing the impleading petition, the claim petition was disposed of. Therefore, the appeal was allowed and the award of Commissioner of Labour was set aside and the matter was remitted back to the Commissioner with a direction to give opportunity to the parties and pass orders in accordance with law. Therefore, the matter was remanded and the second respondent was made as a party, however no order was passed with regard to impleading the Insurance Company.

5. After contest, the award has been passed to the tune of some amount and the said amount is being challenged before this Court.

6. The learned Counsel for the appellant would submit that the Insurance Company is not made as a party and the appellant is not the employer and the second respondent alone was the employer of the first respondent.

7. The learned Counsel for the second respondent would submit that the vehicle was sold on 05.06.1998, to the appellant and only to deny the liability, the appellant has falsely put forth that the second respondent is the owner of the vehicle.

8. The learned Counsel for the claimant supported the award.

9. A perusal of the award would show that the Commissioner rightly held that the first respondent/claimant is the employee under the appellant relying upon the Ex.A3-Bills. Moreover, the Commissioner also found that the auto-rickshaw was already sold by the second respondent to the appellant as per Exs.A14 and A15. Therefore, based on the evidence of PW.1 and the documents referred to above, the Commissioner rightly found that the workman sustained injury during the course of and out of employment under the appellant. Further, the Commissioner also found that the vehicle was owned by the appellant and not by the second respondent. Therefore, there is no occasion for this Court to interfere with the findings given by the Commissioner as there was no illegality and perversity in the findings of the Commissioner. Even the amount awarded is only Rs.91,300/- (Rupees Ninety One Thousand Three Hundred only). Taking into consideration the fact that the accident occurred on 29.11.1998 and for the past eighteen years, the matter is pending, there is no merit in the appeal and hence, this Civil Miscellaneous Appeal is dismissed. The Commissioner -cum-Deputy Commissioner of Labour, Dindigul, is directed to pay the balance amount along with interest to the



workman within a period of two weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, the connected Miscellaneous petition is also dismissed.

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Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To
The Commissioner-cum-Deputy Commissioner of Labour,
Dindigul.

Copy to:
The Section Officer/Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai

+1 cc to MR.S.M.S.JOHNNY BASHA, Advocate SR.No.81778

+1 cc to MR.V.PUSUMPON, Advocate SR.No.82023

+1 cc to MR.S.KARTHIK, Advocate SR.No.81630

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