

RESERVED ON : 11.12.2017

DELIVERED ON : 14.12.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2017

Coram

THE HON'BLE MR. JUSTICE M.DURAI SWAMY
C.M.A.No.1938 of 2015 &
M.P.No.1 of 2015

National Insurance Company Limited
No.81-D, Chetty Street
Tiruchengode

... Appellant

VS

1.Madesh

2.G.Muthuraja

... Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act (Act 111/1923) against the order dated 16.05.2014 passed in W.C.No.22 of 2012 on the file of Commissioner for Workmen's Compensation, Salem.

For Appellant : Mr.N.B.Surekha

For Respondents : No appearance

J U D G M E N T

Challenging the order passed in W.C.No.22 of 2012 on the file of Commissioner for Workmen's Compensation and Deputy Commission of Labour, Salem, the Insurance company has filed the above appeal.

2. The 1st respondent-claimant filed W.C.No.22 of 2012 claiming compensation of Rs.5,00,000/- (Rupees five lakhs only) for the injuries sustained by him.

3.1 According to the claimant, he was working as a driver of lorry bearing Registration No.KA-01-MG-0545 under the 2nd respondent. While so, on 28.03.2011, at about 7.00 p.m., he was travelling in a TVS Star City Motor Cycle bearing

Registration No.TN-24 C- 0211 from Hosur to Thali Road for buying a fan belt to the lorry bearing Registration No.KA-01-MG-0545. At that time, an unknown vehicle hit against the claimant and he sustained grievous injuries and fracture on his left leg. The 2nd respondent took him to the Hospital at Hosur and he was taking treatment for his injuries. A case was registered in Krishnagiri Traffic Investigation Wing Police Station in Crime No.94 of 2011.

3.2 According to the claimant, the accident had occurred only during the course of employment as driver under the 2nd respondent. According to the claimant, he was aged 21 years at the time of accident and his monthly income was Rs.8,000/-. The appellant is the insurer of the lorry bearing Registration No.KA-01-MG-0545. In these circumstances, the claimant has filed the claim petition claiming a compensation of Rs.5,00,000/- (Rupees five lakhs only).

4. The appellant filed their counter wherein they have stated that the lorry bearing Registration No.KA-01-MG-0545 belonged to the 2nd respondent and the same was insured with them. However, the said lorry was not involved in the accident. When the claimant was travelling in a two wheeler bearing Registration No.TN-24 C- 0211, another two wheeler hit against him and due to which, he sustained injuries. It is a case of hit and run and the lorry belonging to the 2nd respondent was not involved in the accident. Therefore, the insurance company, viz., the appellant is not liable to pay any compensation for the injuries sustained by the claimant, since the insured vehicle was not involved in the accident.

5. Before the Labour Commissioner, on the side of the claimant, 3 witnesses were examined and 10 documents, Exs.A-1 to A-10 were marked, on the side of the 2nd respondent, viz., the owner of the vehicle, he was examined as R.W.1 and 2 documents, Exs.R-1 & R-2 were marked and on the side of the Insurance Company, R.W.2 was examined and the insurance policy was marked as Ex.R-3.

6. The Labour Commissioner, after taking into consideration the oral and documentary evidences let in by both the parties, directed the appellant-Insurance Company to pay a total sum of Rs.2,93,648/- (Rupees two lakhs ninety three thousand six hundred and forty eight only) as compensation to the claimant.

7. Challenging this award, the Insurance Company has filed the above appeal.

8. Though notice was duly served on the respondents and their names have been printed in the cause list, non appeared for the respondents. In fact, in order to give one more opportunity to the respondents, the appellant was directed to send private notice to the respondents on 13.11.2017 returnable by 27.11.2017 and even in spite of the service of the private notice, the respondents did not appear before this court.

9. In these circumstances, this court heard the submissions made by the learned counsel appearing for the the appellant.

10. It is not in dispute that the lorry bearing Registration No.KA 01 MG 0545 belonged to the 2nd respondent was insured with the appellant-Insurance Company. According to the claimant, he was working under the 2nd respondent as a driver of the said lorry. It is also the case of the 1st respondent-claimant that while he was travelling in TVS Star City Motor Cycle from Hosur to Thali, another unknown two wheeler dashed against the claimant and due to which, the claimant sustained grievous injuries. Admittedly, the lorry bearing Registration No.KA 01 MG 0545 was stationed at lorry shed.

11. It is the case of the claimant that he went in the two wheeler on 28.03.2017 for purchasing a fan belt for the lorry bearing Registration No.KA 01 MG 0545. According to the claimant, since the accident had occurred during the course of the employment, the Insurance Company is liable to pay the compensation.

12. Admittedly, the lorry Registration No.KA 01 MG 0545, which was insured with the appellant-Insurance company, was not involved in the accident. There was a collusion between two motor cycles on 28.03.2011, in which, the claimant was injured. Had the lorry met with an accident and had the claimant sustained injuries out of the said accident, in that case, the Insurance Company is liable to pay the compensation. Here, the lorry was not at all involved in the accident. Even the First Information Report, produced by the appellant, would establish that it was a case of hit and run.

13. When the lorry was not involved in the accident, I am of the considered view that the appellant-Insurance Company is not liable to pay any compensation. However, the 2nd respondent, who is the owner of the lorry and under whom the 1st respondent-claimant is working as driver, is liable to pay the compensation to the 1st respondent-claimant.

14. In these circumstances, the award of the Deputy Commissioner of Labour, Salem is modified to the effect that the

appellant-Insurance company is not liable to pay any compensation to the 1st respondent-claimant, instead, the 2nd respondent, who is the owner of the lorry and under whom the 1st respondent-claimant is working as driver, is liable to pay the compensation to the 1st respondent-claimant, as awarded by the Deputy Commissioner of Labour, Salem. It is open to the 1st respondent-claimant to recover the award amount from the 2nd respondent.

With the above observations, the order passed by the Deputy Commissioner of Labour in W.C.No.22 of 2012 is modified and the above Civil Miscellaneous appeal is allowed in so far as the appellant is concerned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

Rj
To

1. The Workmen's Compensation and
Deputy Commission of Labour
Salem

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

+1cc to Mr.N.B.SUREKHA Advocate, S.R.No. 89099

Judgment in
C.M.A.No.1938 of 2015 &
M.P.No.1 of 2015

GMR (CO)
TR(09/01/2018)

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