

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2017

CORAM :

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

C.M.A.No. 1835 of 2013
in M.P.No. 1 of 2015

The Divisional Manager
ICICI Lombard General
Insurance Company Ltd.
Chottabhai Centre
II Floor, No. 140, Nungambakkam High Road
Chennai-600 034. ... Appellant

Vs.

1.Xavier
2.Kanniappan Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, against the order dated 09-03-2012 made in W.C.No.631 of 2008 on the file of the Commissioner Workmen Compensation (Deputy Commissioner of Labour-II) at Chennai-6.

For Appellant : M/s.R.Sree Vidhya

For R1 : M/s. A.Adbul Kani
for K.Ayyadurai

JUDGMENT

Aggrieved over the order passed by Commissioner of Workmen's Compensation (Deputy Commissioner-II) Chennai, the Insurance Company preferred this appeal on the grounds that accident had not taken place during the course of employment and the date for payment of interest shall commence from the date of order.

2.The following Substantial Questions of Law have been raised in the present appeal:-

"a) Whether the learned Commissioner has erred in holding that the claimant had sustained employment injuries?

b) Whether the learned Commissioner has erred in directing the Appellant to pay the interest from the date of accident instead of the date of assessment?

1. Whether the Award of the learned Commissioner requires to be set aside or modified?"

3. In so far as the first question of law, with regard to the employment injuries is concerned, the first respondent/claimant has categorically proved, by oral and documentary evidence, that he was employed as driver under the second respondent. The accident has been proved through Ex.P1 - First Information Report, Ex.P4 - driving license, Ex.P8 - legal notice issued to the respondents therein. There was no reply to the legal notice issued by the first respondent/claimant. With these evidence, the claimant has categorically deposed that he was working as driver under second respondent. This statement was not disputed by the second respondent. Therefore the employment status of the first respondent stands proved. If at all, the appellant insurance company wants to disprove the claim of the first respondent as not the employee, they should have adduced independent evidence through the employer. The employer has neither filed reply statement nor appeared before the Court, with an evidence, denying the employer - employee relationship. When the employer employee - relationship is not denied by the second respondent employer, the appellant - Insurance Company cannot take such defence.

4. In so far as, the payment is concerned, as per Section 4-A of Workmen's Compensation Act, interest is liable from the date of order. The Hon'ble Supreme Court in Pratap Narayan Singh Deo Vs. Shrinivas Sabata and another [1976 A.C.J.141] has held that the word "falls due" as specified under Section 4-A of the Employee's compensation Act, 1923, denotes the date of accident and not the date of order passed by the authority. Therefore, the first respondent/claimant is entitled to interest by 30 days from the date of accident. Therefore, both the questions of law are answered against the appellant.

5. The learned counsel for the appellant would submit that the insurance company has already deposited 50% of the award amount and the same was withdrawn along

with the interest. In view of the findings rendered above, the appellant is directed to deposit balance 50% amount. The appellant is further directed that in view of the award of interest from the date of accident, the interest on the entire compensation shall be calculated appropriately.

6. The Civil Miscellaneous Appeal is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS v)

//True Copy//

Sub Assistant Registrar

bsm/bkn
To

The Commissioner Workmen Compensation
(Deputy Commissioner of Labour-II)
Chennai - 600 006.

+1cc to M/s. A.Abdul Kani, Advocate SR.No. 84964

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ASK(02/11/2018)

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