



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2017

CORAM

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1599 of 2007
and
M.P(MD).No.1 of 2007

The Manager,
United India Insurance,
Company Limited,
Chennai - 2.

.... Appellant/2nd Respondent

Vs.

1.V.Boopalan

...1st Respondent/Petitioner

2.T.Sivalingam

... 2nd Respondent/ 1st Respondent

(Set Exparte before the Commissioner for Workmen's
Compensation Cum Deputy Commissioner of Labour,
Trichirappalli)

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act against the award, dated 04.01.2006 made in W.C.No.520 of 2003, on the file of the Commissioner for Workmen Compensation cum Deputy Commissioner of Labour, Tiruchirappalli.

For Appellant : Mr.J.S.Murali
For R1 : No appearance
For R2 : Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant against the award, dated 04.01.2006 made in W.C.No.520 of 2003, on the file of the Commissioner for Workmen Compensation cum Deputy Commissioner of Labour, Tiruchirappalli.

2.The facts of the case is that the first respondent/claimant was employed as an auto driver under the second respondent/first respondent's Auto bearing Registration No.TN-04-J-2517. On 08.07.2003 at about 10.00 a.m. while the first respondent/claimant was driving the auto bearing Registration No.TN-04-J-2517 from Siruganpur to South Madhavi Main Road and when he reached the Chandrakasu field, a cyclist suddenly crossed the road, to avoid any untoward incident, the first respondent/claimant applied the break, but unfortunately the auto capsized. Due to the accident, the



petitioner had sustained multiple and grievous injuries all over the body including fracture in the right shoulder and he was admitted as in-patient in the Government Hospital, Trichy and was taking treatment from 25.04.2003 to 21.05.2003. Thereafter, he had taking treatment in the Muthu Nursing Home, Trichy. Due to the injuries sustained, the claimant was unable to do his work since he was suffering from continuous headache, giddiness, which he claimed to be permanent disability. The Maruvathur Police Station has registered a case under Section 279,337 and 338 I.P.C., in Crime No.112/2003 and the same was pending for investigation.

3.At that time of accident, the first respondent/claimant received wages nearly about Rs.4,500/-per month including all allowance. Therefore, the petitioner has claimed compensation for Rs.2,00,000/- for loss of earning power, permanent disability, pain and suffering, extra nourishment and medical expenses, which he had taken under the Workmen Compensation Act stating that he was working under the first respondent and the second respondent is the insurer of the vehicle and they are liable. Hence the first respondent/claimant prayed that they are jointly and severally liable to pay the compensation to him and he claimed a sum of Rs.1,39,677/- with interest at 12% per annum.

4.The appellant/United India Insurance, filed counter-affidavit and denied all the averments stated by the first respondent/claimant. They submitted that the vehicle bearing Registration No.TN-043-2517 was registered as a passenger vehicle at Madras and the permit Jurisdiction to the vehicle permits to ply within the limits of Madras City Corporation. The alleged accident has taken place at Kunnam Taluk, Perambalur District within Maruvathur Police limits, which is in violation of the condition. As such, there was no permit at all for the first respondent's vehicle to ply at Perambalur District, thereby, the terms and conditions of the Insurance Policy is violated and the Insurance Company is not liable to indemnify the first respondent, who is the owner of the vehicle with respect to the petitioner's claim. They also denied the averments that grievous injuries were sustained by the claimant, and hence, sought for dismissal of the above petition.

5.The second respondent/first respondent, who is the owner of vehicle was set ex-parte before the Commissioner for Workmen Compensation cum Deputy Commissioner of Labour, Tiruchirappalli.

6.Before the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Tiruchirappalli, on the side of the petitioner, the petitioner was examined as P.W.1 and Dr.Ravi has been examined as P.W.2 and five documents viz., Exs.P.1 to P.5 were marked and on the side of the respondents, one Ganapathy Sundaram was examined as R.W.1 and one Mugunthan was examined as R.W.3 and four documents viz., Ex.R.1 to R.4 were marked.



7. Heard the learned counsel appearing for the appellant.

8. On going through the F.I.R, it is seen that there was an accident on 08.07.2003 which was not disputed by the learned Counsel. Regarding the contention raised by the claimant that during the employment, the first respondent/claimant has sustained disability of 33% and the same has been established by the Doctor, namely, Mr. Ravi, who had given treatment to the first respondent/claimant was examined as P.W.2. In his deposition, the Doctor has stated that the claimant had suffered fracture on his right hand shoulder bone, thereby, the free movement of the shoulder bone was reduced 60 degree and he will not be able to do any hard work, thereby, opined that the petitioner suffered 33% disability. The petitioner submitted that he earned Rs.4500/- as monthly salary, but no documents were produced to prove the same, the Commissioner has rightly taken the income as per the minimum wages Act and as per the Act, a sum of Rs.1,781/- was fixed as his salary; Rs.1448/- was fixed towards dearness allowance. Therefore, the Commissioner has arrived at a sum of Rs.3229/- and fixed the same as his monthly salary. At the time of accident, the age of the petitioner was 25 years, based on the above, the Commissioner has directed the appellant/United India Insurance Company Limited to pay a sum of Rs.1,39,677/- as compensation to the first respondent/claimant as per the following formula:

Compensation payable:

Rs. $60/100 \times 3229 \times 218.47 \times 33/100$: Rs.1,39,677.04
Total : Rs.1,39,677/-

9. Against which, the appellant/United India Insurance Company has filed the present Civil Miscellaneous Appeal.

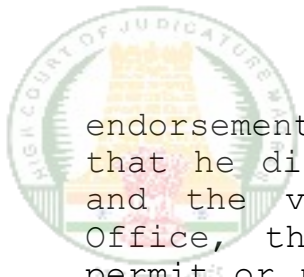
10. In this Civil Miscellaneous Appeal, the appellant/Insurance Company has raised the following Substantial Questions of Law for consideration:

"1. When there was no permit condition to ply the vehicle on the place of the alleged accident whether liability can be fixed on the appellant?

2. When the petitioner himself drove the vehicle rashly and negligently "Adding Peril" whether the liability can be fixed on the appellant?

11. The learned counsel for the appellant/ Insurance Company has contended that the vehicle involved in the accident was registered as passenger vehicle at Madras and the permit pertains to the vehicle must be within the limits of Madras City Corporation, hence, the appellant cannot be held liable for the same.

12. It is seen from the records, R.W.2-Mugunthan (R.D.O) has deposited in his evidence that he sent a letter through R.P.A.D to the second respondent/first respondent regarding the production of license and permits of the vehicle and the same was returned with an



endorsement as 'not in station'. In cross examination he deposed that he did not inspect the vehicle at Perambalur Transport Office and the vehicle has been registered at only Chennai Transport Office, therein, he did not verify whether the vehicle had any permit or not to ply in Perambalur, the appellant/Insurance Company has not proven anything regarding the permit of the vehicle and whether there was any violation.

13. On going through the entire records, the Commissioner has come to the conclusion that there was no documents was produced regarding the permit to the vehicle whether permit was given only to the City Corporation limit and also there was no other materials produced to show that they have not followed the permit condition, to substantiate their claim that the appellant/second respondent is not liable to pay any money as compensation. There was no such condition was found in the said policy. In the absence of any valid materials produced by the Insurance Company, the Commissioner has rightly come to the conclusion that the appellant/Insurance Company is liable to pay the compensation.

14. Hence, this Court do not find any infirmity or illegality in the award passed by the Commissioner for Workmen's Compensation, Tiruchirappalli and the same does not require any interference from this Court.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the award, dated 04.01.2006 made in W.C.No.520 of 2003, on the file of the Commissioner for Workmen Compensation cum Deputy Commissioner of Labour, Tiruchirappalli is hereby confirmed. The first respondent/claimant is entitled to withdraw the entire amount deposited before the Deputy Commissioner of Labour, Tiruchirappalli to the credit of W.C.No.520 of 2003. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner for Workmen's Compensation
cum Deputy Commissioner of Labour,
Tiruchirappalli.

2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

MSA

TE/MR-KKR/SAR-2 : 18/12/2017 : 4P/3C

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