



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2017

CORAM :

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**THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN**

C.M.A. (MD) No.1290 of 2015  
and  
MP (MD) No.1 of 2015

The Branch Manager,  
National Insurance Company Limited,  
North Veli Street,  
Madurai-625 001.

... Appellant

Vs.

1.M.Jothi Basu

2.Venkatachalam Pillai @ Peria Thambi

... Respondents

Prayer: Appeal filed under Section 30 of Workmen Compensation Act, to set aside the award dated 21.07.2015 (Which was despatched on 09.09.2015 and the same was received by the Appellant Insurance Company on 10.09.2015 as evident through the postal cover enclosed with the grounds) made in W.C.No.172 of 2006 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Madurai and be pleased to dismiss the claim as against the appellant.

|               |                  |
|---------------|------------------|
| For Appellant | : Mr.J.S.Murali  |
| For R1        | : Mr.T.Amjadkhan |
| For R2        | : Mr.G.Murugan   |

### JUDGMENT

The insurance company has filed this appeal questioning the award passed by the Commissioner for Workmen Compensation, Madurai.

2.The first respondent herein was a tiller. While he was attending the agricultural operations by driving the tractor cum tiller, the accident happened. He filed a claim petition before the Deputy Commissioner of Workmen Compensation, Madurai against the employer. At the instance of the employer, the appellant insurance company was impleaded as a party, since, the said machine is a motor vehicle and came under the coverage of the insurance policy. During



the course of enquiry, the first respondent submitted that there is no employer and employee relationship between the claimant and the first respondent. He was set ex parte and an ex parte order was passed. Subsequently, the same was set aside and the matter was once again heard on merits. Ultimately the authority, after considering the materials available on record awarded a sum of Rs.1,34,298/-. Questioning the same, this appeal has been filed.

3. Heard the learned counsel for the appellant insurance company as well as the respondents.

4. The primary contention of the appellant insurance company is that the findings of the Commissioner that there was an employee and employer relationship between the claimant and the first and second respondent herein is not correct.

5. I have gone through the entire materials available on record. The accident in question occurred on 16.10.1996. He sustained injuries and was admitted in hospital as an inpatient. Later, an FIR was also registered. A reading of the FIR would show that, the first respondent herein categorically stated that he was eking out his livelihood by working as tiller for the second respondent. It could not have been the intention of both the parties that they should fasten the entire liability on the Insurance Company for getting compensation. The claim petition was filed years later. But in the FIR the claimant clearly alleged that he was an employee under the second respondent.

6. Admittedly the vehicle was insured with the appellant Insurance Company. The Commissioner of Workmen Compensation, after considering the entire material available on record, categorically held that there is existence of employer and employee relationship between the first respondent and the second respondent. The second respondent had put in a denial in the first instance to wriggle out or the legal consequences. The inconsistent stands taken by him are immaterial. Thereafter, I hold that there is no reason to interfere with the finding given by the Commissioner of Workmen Compensation with regard to the existence of the employer- employee relationship. It is based on credible material. It cannot be termed as perverse.

7. The appellant insurance company is directed to pay the entire compensation award with 7.5% interest per annum and costs, from the date of petition till the date of realization, within a period of eight weeks from the date of copy of this order, less the amount already deposited if any. On such deposit, the claimant, is permitted to withdraw the entire amount, less the amount already withdrawn by him, if any, by filing proper application.



8. Accordingly, this appeal is dismissed. No costs.  
Consequently, connected Miscellaneous Petition is closed.

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/True Copy/

Sd/-

Assistant Registrar (Crl. Side)

Sub-Assistant Registrar

To

1. The Commissioner for Workmen Compensation,  
(Deputy Commissioner of Labour),  
Madurai.

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

+One cc to Mr. J. S. Murali, Advocate, SR.No.86384

+One cc to Mr. N. Ananthapadmanabhan, Advocate, SR.No.86465

dss

RL/5C/3P/GT/SAR4/15/12/2017

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