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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NOS.1824 OF 2004 AND 788 OF 2005
AND CMP NO.9867 OF 2004

CMA NO.1824 / 2004

Oriental Insurance Co. Ltd.,
Esplanade,
Chennai - 600 108.

... Appellant/2nd Respondent

Vs.

1.S.Parvathi

2.M/s.Patel Exports (India)
No.18, Race Course Road,
Guindy,
Chennai - 600 032.

3.M/s.Apparels International
17, Race Course Road,
Guindy,
Chennai - 600 032.

... Respondents/Petitioner &
Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 03.12.2003 received by the appellant on 29.12.2003 passed in W.C.No.265 of 2001 on the file of the Commissioner for Workmen's Compensation - I, Chennai - 6 (Before the Deputy Commissioner of Labour - I, Chennai - 6).

For Appellant

:

Mr.R.Sivakumar

CMA NO.788 / 2005

S.Parvathi

... Appellant/Petitioner

Vs.

1.M/s.Patel Exports (India)
No.18, Race Course Road,
Guindy,
Chennai - 600 032.



2.The Oriental Insurance Co. Ltd.,
United India Building
Esplanade,
Chennai - 600 108.

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3.M/s.Apparels International
No.17, Race Course Road,
Guindy,
Chennai - 600 032.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 03.12.2003 passed in W.C.No.265 of 2001 by the Deputy Commissioner for Labour-I (Commissioner for Workmen's Compensation-I) Chennai - 600 006 and the same has been received by the appellant on 27.12.2003.

For Appellant	:	Mr.A.Shanmugaraj
For Respondents 1&3	:	Mr.R.Parthiban
For Respondent 2	:	Mr.R.Sivakumar

COMMON JUDGMENT

Against the order dated 03.12.2003 passed by the Authority under the Workmen's Compensation Act, in W.C.No.265 of 2001, the claimant as well as the insurance company, have preferred these Civil Miscellaneous Appeals.

2. The award passed by the Authority fastened liability on the insurance company and directed them to deposit the amount within 30 days, failing which, the claimant will be entitled to interest from the 31st day of accident. Questioning the liability, the insurance company preferred the appeal in CMA No.1824 of 2004. In respect of the interest portion being not awarded from the date when it fell due, the claimant preferred the appeal in CMA No.788 of 2005.

3. The case of the claimant is that while she was in employment under the first respondent viz., M/s.Patel Exports (India), she met with an accident and the bricks fell down on her and in that accident, she suffered fracture in the ankle and crush injury on the foot. She filed a claim petition against the employer. The first respondent viz., M/s.Patel Exports (India) denied the employer employee relationship and it is averred that the claimant was employed under the third respondent viz., M/s.Apparels International, and covered by ESI Act.



4. The third respondent viz., M/s.Apparels International, has also filed a counter stating that the claimant was an employee under them and she is covered under the Employees' State Insurance Act, 1948, and hence, the claim petition is not maintainable.

5. In order to prove the claim, the claimant has let in evidence as A.W.1 and marked Exs.A1 to A12. To prove the disability, A.W.2 - Doctor was examined. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and Exs.R1 to R7 were marked.

6. After considering the oral and documentary evidence, the Authority has come to a conclusion that the claimant is an employee of the first respondent viz., M/s.Patel Exports (India) and suffered injury during the course of employment. On the basis of age and corresponding multiplication factor, income as per the Minimum Wages Act and percentage of disability as per Ex.A10, compensation was arrived at Rs.1,05,737/-. Since the second respondent insurance company issued a policy covering the employees of the first respondent, the authority has held that the second respondent insurance company is liable to pay the compensation.

7. Learned counsel appearing for the insurance company would submit that the first respondent viz., M/s.Patel Exports (India) has categorically stated in their reply statement as well as in their evidence that the claimant was not an employee under them. On the other hand, the third respondent viz., M/s.Apparels International, has affirmed that the claimant was employed under them and they have paid contribution under ESI Act and therefore, the claimant is covered by the Employees' State Insurance Act. Further, the third respondent viz., M/s.Apparels International, has settled the medical bills for the treatment of the claimant. In such circumstances, the insurance company should not have been made liable to pay the compensation and the claim petition must have been dismissed.

8. The learned counsel appearing for the claimant would vehemently contend that the respondents 1 and 3 have set up a new case at the time of trial and nowhere in the pleadings, it was stated that the claimant was re-employed by the third respondent. The documents which were marked as Exs.R1 to R5 were all prior to the date of accident. The claimant has categorically pleaded and proved by evidence that she was employed under the third respondent till 20.02.2000 and her accounts were settled by the third respondent on account of her resignation. Thereafter, she joined the first respondent and worked under them. The medical bills vide Ex.A9 would go to show that the first respondent settled the bill amount and the



respondent side witness also, during cross examination, affirmed that payment was made by the first respondent. Even though the suggestion made by the respondent witness that Ex.R6 was created for the purpose of supporting their case that the claimant was re-employed, they have drastically failed to mark the attendance register, wage register or other documents to prove their case of re-employment of the claimant. Therefore, he would submit that the finding of the authority is based on oral and documentary evidence and the insurance company is liable to pay compensation.

9. I have considered the rival submissions and perused the materials placed before this Court.

10. From the materials available before this Court, the employment of the claimant under respondents 1 and 3 was admitted. From the sequence of events and the documentary evidence, it is found that on the date of accident, the claimant was employed under the first respondent namely, M/s.Patel Exports (India). The second respondent issued insurance policy in favour of the first respondent. In the absence of any proof of re-employment and the claimant continued to be an employee under the third respondent, the finding of the authority that she shall not be construed as an employee under the third respondent and covered by the Employees' State Insurance Act, is very much correct and there is no discrepancy in such a finding. It is proved beyond doubt that the claimant was an employee under the first respondent and hence, the finding of the authority that the insurer is liable to pay compensation is also sustainable and does not require any interference.

11. In so far as the computation of the compensation is concerned, there is no serious objection and therefore, the award passed by the Authority under Workmen's Compensation Act, in W.C.No.265 of 2001 dated 03.12.2003 is hereby confirmed.

12. In so far as the award of interest is concerned, as per Section 4-A of the Employees' Compensation Act, it is due from the 31st day of the accident, which is a statutory entitlement. The Authority should have ordered payment of interest after the lapse of 30 days from the date of accident. On the other hand, has ordered interest in default of deposit of money. Such a direction is not sustainable and the statutory entitlement cannot be taken away. Therefore, the claimant is entitled to interest from the 31st day of the accident.

13. The award dated 03.12.2003 passed in W.C.No.265 of 2001 by the Deputy Commissioner for Labour-I (Commissioner for Workmen's Compensation-I) Chennai - 600 006, by the authority



under Workmen's Compensation Act, is modified to the above extent.

14. At this juncture, the learned counsel for the insurance company would submit that they have already deposited the entire award amount of compensation and the claimant has withdrawn 50% of the same. Therefore, the insurance company is directed to deposit interest on the award of compensation at the rate of 12% per annum from the 31st day of accident, till the date of deposit, within a period of six weeks from the date of receipt of the copy of the order. On such deposit being made, the claimant is entitled to withdraw the same.

15. In the result, CMA No.1824 of 2004 filed by the insurance company is dismissed and CMA No.788 of 2005 filed by the claimant is allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

TK

To

The Commissioner for Workmen's Compensation - I
(Deputy Commissioner of Labour - I)
Chennai - 600 006.

copy to
The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.A.SHANMUGARAJ, Advocate, S.R.No.10024
+1cc to Mr.R.SIVAKUMAR, Advocate, S.R.No. 9454

C.M.A.NOS.1824 OF 2004
AND 788 OF 2005

SSV(CO)
TR(06/06/2018)