

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: **02.11.2018**

CORAM

THE HONOURABLE MRS. **JUSTICE BHAVANI SUBBAROYAN**

C.M.A.No.2444 of 2005

and

M.P.No.13030 of 2005

The Oriental Insurance Company Ltd.,
Chennai-600 108.

...Appellant

Vs

1.Thiru K.Sivaprakash,

2.Thiru Venkatesan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order dated 25.10.2004 made in W.C.No.235 of 2003 on the file of the Court of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-I) at Chennai and received on 06.11.2004.

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For Appellant :Mr.M.Krishnamorrthy

For Respondents :Served NA for R1
Given up for R2

J U D G M E N T

The Civil Miscellaneous Appeal has been filed against the order of decree dated 25.10.2004 before the Workmen's Compensation, the Commissioner, Chennai in W.C.No.235 of 2005.

2. The case of the respondents before the Commissioner was that he was working as a driver under the 2nd respondent herein the owner of the vehicle. While he was travelling in his friend's auto after parking his auto in the railway station, the said auto was capsized and has collided with an unknown lorry resulting in serious injuries to him. He sustained fracture and lost his two toe fingers in the right foot due to which he was not able to work as earlier and could not earn any income and permanently disabled and claimed an amount of Rs.4,00,000/- as his compensation to be paid to him. The petitioner was aged 34 years and the loss of earning capacity has to be taken as 100% and while he was in the course of employment and was on duty in the auto bearing registration No. TN 01 4113 which belongs to the 2nd respondent the owner of the vehicle and the said auto has been insured with the appellant herein under policy No.411803/2002/311 and the said policy was valid from 24.04.2001 to 23.04.2002, the

appellant herein is liable to pay the compensation to the 1st respondent herein. The said incident occurred on 04.08.2002 on Wall Tax Road, Chennai. In the said accident, the 1st respondent's legs were crushed due to which he lost his two toes. The 2nd respondent herein did not file any counter or appeared before the said authority and the appellant /2nd respondent therein namely the Oriental Insurance Company Limited appeared and filed a counter.

3. The appellant would submit that there was a proof to show that at the time of accident, the 1st respondent herein was employed by the 2nd respondent and the accident was occurred during the course of employment. The employer and employee relationship between the parties was properly established, as such the appellant is not liable to pay any compensation as per the insurance policy. The said incident was not proved by producing valid licence as well as the 1st respondent/2nd respondent herein, the owner of the vehicle has not informed the same to the 2nd respondent/appellant for claiming compensation under the said policy. The insured 2nd respondent herein has filed various documents to support his case which are as follows:

1. Discharge sheet issued by the Government Hospital Chennai.
2. FIR
3. Insurance Policy
4. Driving Licence
5. Legal notice
6. Returned cover from the first respondent/owner of the vehicle
7. Returned cover from the insurance company.

4. The Labour Court ,after proper enquiry and trial, has passed judgment and decree in W.C.No.235 of 2003. On 19.04.2004, the owner of the vehicle was set ex-parte. The injured respondent has examined himself as PW1 and a Doctor viz., one Thiagarajan also gave evidence infavour of the injured/claimant. The Doctor also produced two documents viz., disability certificate and x-ray. The appellant and 2nd respondent herein did not produce any witness or any evidences to support their cases. When the claimant has produced the above documents to show that he was injured, by relying on the FIR which has been lodged before the police and the medical certificates which has proved that the injured / claimant got injured only in the course of the employment and as per the Doctor's evidence

on 10.05.2004, the disability caused to the right foot is 25% and for the 1st respondent herein, fracture of bone which has been considered as 15% disability and total 40% of disability has been judged by the said Doctor. As per the said Doctor's evidence, the same has been fixed as 40%. The respondents have not denied the same by producing any other contra evidence. As the age of the 1st respondent herein has been fixed as 38 years as per the driving licence and his salary as 100% has been taken up. Since there was no materials produced to rebut the same as per the Workmen's Compensation Act, a sum of Rs.3,900/- has been fixed by the Labour Commissioner and also the said vehicle has been insured with the appellant herein and the liability has been fixed only on the appellant herein and accordingly amount of Rs.1,77,428/- has been awarded.

5. The appellant has raised a ground stating that there is no documentary evidence produced by the Workmen to prove that he was employed as a driver under the 2nd respondent herein. At the time of the accident he was travelling in his friend's auto for the purpose of going to a hotel and sustained injuries due to capsized of the said auto and having impact with an unknown lorry, he cannot maintain the above appeal as against the appellant / Insurance Company, as the

insured vehicle has nothing to do with the accident involving a third party's vehicle and an unknown lorry. He would also submit that the liability fastened on this appellant, without assigning any proper reason, is liable to set aside.

6. At the time of admission of this Civil Miscellaneous Appeal, the following substantial questions of law are framed for consideration:

"1) Whether liability can be fastened in an insurer for the accidents arising not due to use of the insured vehicle but by some third party vehicle and an unknown vehicle.

2) Whether liability can be fastened on the insurer against the terms and conditions provided in the insurance policy.

3) Whether the percentage of disability can fixed contravening the percentage provided under the Schedule of the Workmen's Compensation Act. The Schedule provides for 17% disability even for the amputation of the entire great toe and entire any other toe and the Commissioner had fixed the loss of earning capacity at 40% for the amputation of great toe and the second toe in the right foot. As such the above assessment is vitiated as it is against the provisions of WC Act."

7. Heard, the learned counsel for the appellant and learned counsel for the respondents and perused the available materials on record.

8. It could be seen from the claimant's petition that the said auto which he was travelling was capsized due to the unknown lorry. According to the claimant he was working with the 2nd respondent as a driver. In the course of employment, he had sustained injuries and hence, he has filed a Writ Petition and the same is not denied and no contrary evidence is proved by the Insurance Company. The FIR has been lodged, which would prove that the said accident was occurred on that fateful day. The 2nd respondent has not produced any evidence rebutting the claim of the claimant and as per the insurance policy, it covers the said accident and accordingly the appellant / insurance company is liable to pay the compensation to the claimant . Minimum Wages Act has been taken into account and the salary of the claimant has been arrived at Rs.3900/- per month and after taking into relevant factors, a sum of Rs. Rs.1,77,428 has been awarded as compensation, which this Court finds a reasonable amount. The disability arrived as 40% wherein the Doctor has certified that the

claimant has sustained crushed injury over the right foot and fractures in the palm has been proved and no other evidence has been produced by the appellant / insurance company to contradict the said disability. The reasonable opportunity has been given to the parties to produce evidence, which was not taken seriously by the parties and the Labour Commissioner only after taking into consideration of all the issues on hand and based on the documents produced and the evidence adduced, has awarded the compensation, which this Court is of the opinion that is just and reasonable. This Court is not inclined to interfere with the order and the award passed by the Commissioner of Workmen Compensation, Deputy Commissioner of Labour-I, Chennai.

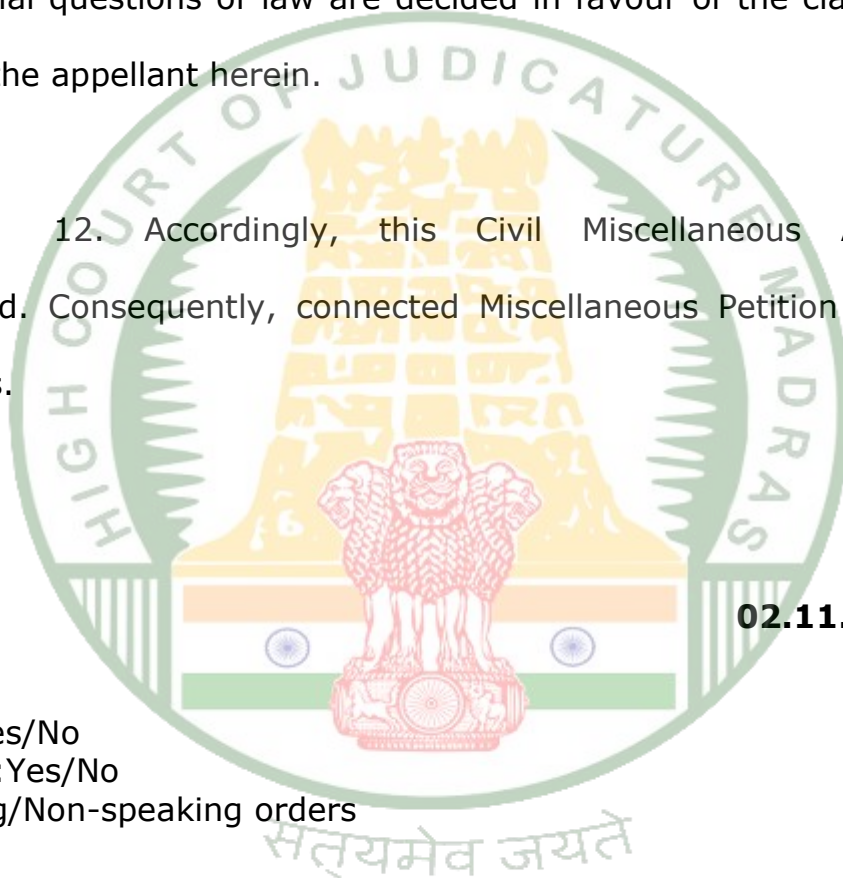
9. In view of the above facts and circumstances of the case, the Civil Miscellaneous Appeal filed by the appellant / insurance company is dismissed. The order of the Deputy Commissioner of Labour, Workmen Compensation is upheld.

10. The amount deposited to the credit of W.C.No.235 of 2003 on the file of the Labour Commissioner to a sum of Rs. 1,77,428/- along with any interest accrued is ordered to be transferred to the account of the claimant within a period of six weeks from the date of

receipt of the copy of this order and the claimant can withdraw the same by filing a formal petition before the Commissioner.

11. In view of the above facts and circumstances, the substantial questions of law are decided in favour of the claimant and against the appellant herein.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed.
No Costs.



02.11.2018

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking orders

vji / nsd

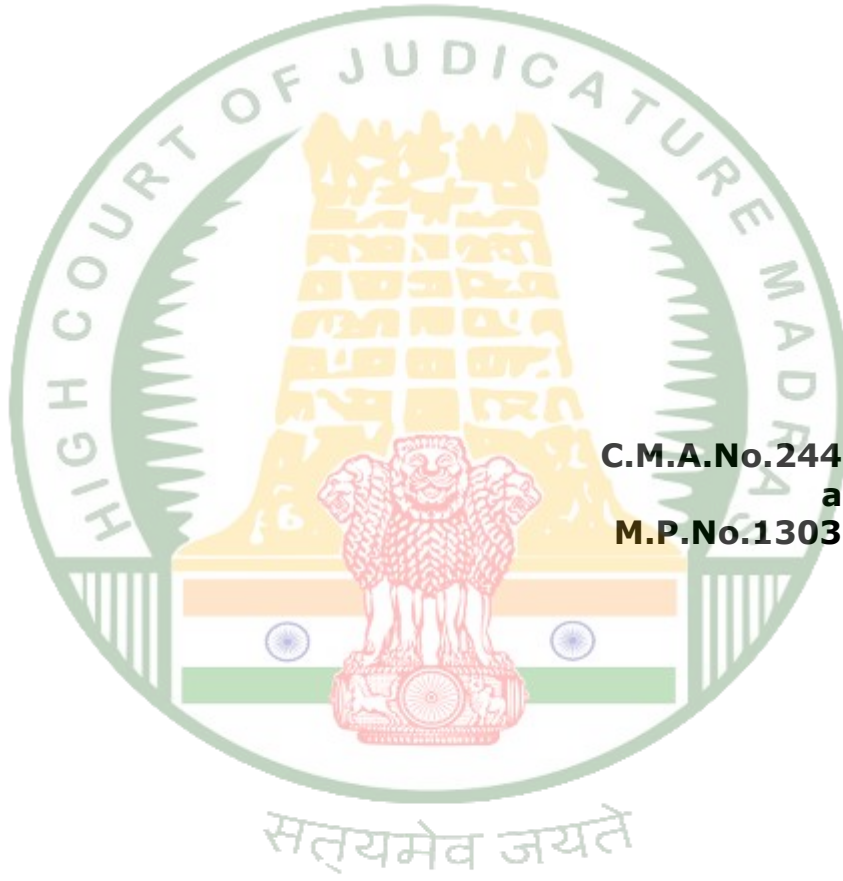
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To

The Commissioner,
Workmen's Compensation,
(Deputy Commissioner of Labour-I)
Chennai.

V.BHAVANI SUBBAROYAN, J.

vji/nsd



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