

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.10.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3080 of 2013

Thiru.Loganathan

Proprietor,

Pachiamman Chesse Labour Body Works,

Saalaikkadu, Salem Main Road,

Sankari - 637 301.

... Appellant / 1st Opposite Party

Vs.

1. Thiru.K.Maheswaran ... 1st respondent/Petitioner/Applicant

2. M/s.United India Insurance Co. Ltd.,
Branch Office, 4/23, New Edapadi Road,

Sankari - 637 301,

Salem District.

... 2nd Respondent/2nd Opposite Party

Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act, 1923, against the order passed in W.C.No.206 of 2003 dated 31.05.2008 on the file of the Deputy Commissioner of Labour Cum Commissioner for Workmen Compensation, Salem.

For Appellant : Mr.MA.P.Thangavel

For R1

: Mr.S.Ramadoss

For R2

: Mr.N.Vijayaraghavan

ORDER

This Civil Miscellaneous Appeal has been filed against the order passed in W.C.No.206 of 2003 dated 31.05.2008 on the file of the Deputy Commissioner of Labour Cum Commissioner for Workmen Compensation, Salem.

2. The brief facts of the case is that the 1st respondent, namely, Thiru.K.Maheswaran, was working as a helper under the appellant herein for a monthly wages of Rs.3500/-. On 13.07.2002 at about 10.P.M., when the 1st respondent was working with high speed machine, a metallic chip, flew and fell into his eyes, as a result, he was injured heavily on his Iris. Since the incident has happened during the course of his employment with the appellant, he approached the appellant and the 2nd respondent, who is the insurer of the appellant for the coverage taken for Workmen, claiming compensation, but, none of them had come forward to compensate for the claim of the 1st respondent. Therefore, the 1st respondent had filed an application in W.C.No.206 of 2003 before the Deputy Commissioner of Labour, Workmen's Compensation, Salem, claiming compensation.

3. The appellant herein had filed a counter before the Deputy Commissioner of Labour, Workmen's Compensation, Salem, by contending that the 1st respondent was never worked under the appellant and there is no master or servant relationship between the appellant and the 1st respondent, and therefore, the statement of the 1st respondent that he was injured, when he was working as helper under the appellant is false, and sought for dismissal of the application filed by the 1st respondent/claimant.

4. The 2nd respondent/Insurance Company also had filed a counter before the Deputy Commissioner of Labour, Workmen's Compensation, Salem, by contending that the 1st respondent was working only as a casual labourer under the appellant and therefore, he is not liable to claim any compensation from the appellant and the 2nd respondent. Further, there is no coverage in the policy, which was taken by the appellant, for workmen and therefore, the 2nd respondent is not liable to pay any compensation to the 1st respondent/claimant.

5. Earlier, the 1st respondent had filed I.A.No.64 of 2005 in W.C.No.206 of 2003 before the Deputy Commissioner of Labour, Workmen's Compensation, Salem, seeking for amendment of his profession as helper in the main application, as he had wrongly mentioned as turner, and subsequently, the said I.A. was allowed and accordingly, his profession was amended as helper in the said application.

6. The Deputy Commissioner of Labour, Workmen's Compensation, Salem, after perusing the materials available on record, and based on the discharge summary and disability certificate of the 1st respondent injured, had come to the conclusion that there was a relationship existed between the appellant and the 1st respondent, and had also come to the

conclusion that the 1st respondent was working with the appellant, at the time when he was injured. Accordingly, the 1st respondent claimant was awarded a sum of Rs.1,08,219/- as compensation, to be paid by the appellant within a period of 30 days from the date of receipt of a copy of the order. As against the said award, the present appeal has been filed.

7. The learned counsel for the appellant would contend that he has taken proper insurance policy from the 2nd respondent/ Insurance Company and as per which, 1 lakh will be covered to each workman, those who work under the appellant as a Manager, Foreman, Welder, Cutter and Helper, and therefore, the 2nd respondent is liable to pay a sum of Rs.1,00,000/- to the said injured, out of the awarded amount of Rs.1,08,219/-, and the remaining amount of Rs.8,219/- along with interest, the appellant is ready to pay to the injured.

8. On perusal of the order of the Deputy Commissioner of Labour, Workmen's Compensation, Salem, it could be seen that even though, the Deputy Commissioner of Labour, has found that proper Insurance Policy (Group Personal Accident Policy) has been taken from the 2nd respondent/Insurance Company, to those who work under the appellant as a Manager, Foreman, Welder, Cutter and Helper, the Deputy Commissioner of Labour has failed to consider the same and passed an order without application of mind, by holding that the appellant is liable to pay the full compensation amount, which has been awarded by the Deputy Commissioner of Labour, to the 1st respondent/claimant.

9. Hence, this Court is of the view that as per the Insurance Policy (Group Personal Accident Policy) taken by the appellant, the 2nd respondent is liable to pay a sum of Rs.1,00,000/- to the 1st respondent injured, as it is mentioned in the said policy that Rs.1,00,000/- will be covered per person. Accordingly, the 2nd respondent is directed to deposit a sum of Rs.1,00,000/-, along with interest from the date of accident till the date of deposit the amount, within a period of eight weeks from the date of receipt of a copy of this order, and the same can be withdrawn by the 1st respondent/claimant by filing a formal petition.

10. The learned counsel for the appellant has submitted that he has already deposited the entire award amount of Rs.1,08,219/- at the time of filing this Appeal.

11. Hence, there shall be a direction to the appellant to withdraw the excess amount of Rs.1,00,000/- paid by him, and the remaining deposited amount of Rs.8,219/- can be withdrawn by the 1st respondent/claimant, immediately, after receipt of a copy of this order.

12. In view of the above, this Civil Miscellaneous Petition is partly allowed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

raja

To

1. The Deputy Commissioner of Labour,
Workmen's Compensation, Salem.
2. The Section Officer, VR Section,
High Court, Madras-104 (2 copies)
3. United India Insurance Co. Ltd.,
Branch Office, 4/23, New Edapadi Road,
Sankari - 637 301,
Salem District.

+1cc to Mr.M.B.Gopalan, Advocate SR.No.69826

+1cc to Mr.S.Ramados, Advocate SR.No.69066

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.69395

C.M.A.No.3080 of 2013

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GMY(15/02/2019)

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