

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1411 OF 2010
AND M.P.NO.1 OF 2010

United India Insurance Co. Ltd.,
Divisional Office
No.82, North Mada Street,
Temple Square Complex,
Mylapore,
Chennai - 600 004. Appellant

Vs.

1.Youniskhan
2.S.Kumar Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act against the award dated 10.12.2009 made in W.C.No.483 of 2007 and received by the appellant on 12.03.2010 on the file of Commissioner of Workmen's Compensation (DCL-I) at Chennai.

For Appellant : Mr.C.Paranthaman
For Respondent-1 : Mr.P.Subramaniyan
For Respondent-2 : Exparte

J U D G M E N T

Aggrieved over the award of compensation and the liability to pay the same, the insurance company preferred the present appeal against the order passed in W.C.No.483 of 2007 dated 10.12.2009, on the file of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-I) Chennai.

2. The first respondent / claimant is an Auto Rickshaw Driver. During the course of his employment under the second respondent while driving Auto Rickshaw, bearing Registration No.TN07-X-1958, he met with an accident on 28.12.2004, in which, he suffered knee fracture and other injuries. It is further stated that he had taken treatment in Royapettah Government Hospital and thereafter in Puthur Hospital and certified by the Doctor that he has suffered 25% disability.

3. The averments made in the claim petition were denied by the appellant / insurance company.

4. In order to prove the claim, the first respondent / claimant examined himself as W.W.1 and the Doctor - W.W.2 to speak about the disability and marked Exs.A1 to A8. On the

side of the respondents, none were examined and no documents were marked.

5. Based on the oral and documentary evidence on the side of the first respondent / claimant, the Authority under Workmen's Compensation Act, has held that the accident had taken place during the course of his employment. At the time of accident, the claimant was 25 years of age and was drawing Rs.5,000/- as monthly salary. However, no proof of income was marked by the first respondent / claimant. Therefore, the Authority has adopted Minimum Wages Act and fixed his income as Rs.3,027.70 and applying the appropriate multiplier, has arrived at Rs.98,511/- as compensation. Further, the appellant / insurance company was made liable to pay compensation, as the insurance policy was in force on the date of accident. The insurance policy was marked as Ex.A3; driving license as Ex.A4; Registration Certificate as Ex.A5; and Permit as Ex.A6. Since the owner of the vehicle was covered by insurance policy, the Authority directed the appellant / insurance company to deposit the entire award amount.

6. Learned counsel for the appellant / insurance company would contend that the first respondent / claimant had taken treatment as an outpatient for one day and he had not produced any evidence to show that he suffered knee injury and had taken treatment for the same. In the absence of any convincing evidence, the Authority ought not to have granted compensation.

7. Even though the appellant / insurance has taken a stand that they are not liable to pay compensation, they have not let in any evidence to prove the same. In the absence of any proof, the evidence of the first respondent / claimant has to be accepted. The evidence is supported by Exs.A1 to A8. Therefore, I do not find any infirmity in the decision taken by the Authority under the Workmen's Compensation Act.

8. In the result, the Civil Miscellaneous Appeal, merits no consideration and the substantial questions of law raised by the appellant / insurance company are also answered in the negative and accordingly, stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

To

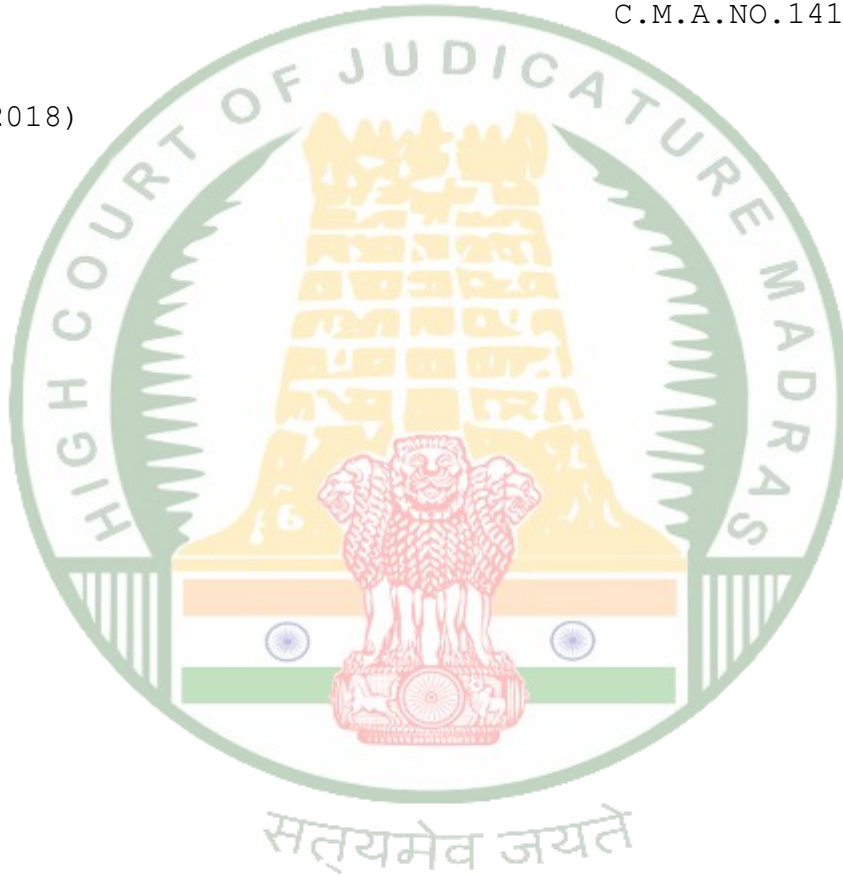
1. The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour - I)
Chennai.

2. The Section Officer, VR Section, High Court, Madras.

+ 2 ccs to Mr. C. Paranthaman, Advocate Sr.7299

C.M.A.NO.1411 OF 2010

NRJK (CO)
EU (03/04/2018)



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