

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.GOVINDARAJ

C.M.A.No. 1228 of 2006 and
C.M.P.No.5127 of 2006

M/s. National Insurance Company Limited,
No.751, Anna Salai,
Chennai - 600 002. Appellant/2nd Respondent

Vs.

1. B.Murthy
2. M.Moongaiyan
(Ex-parte in the Lower Court)
... Respondent/Petitioner/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 30 of the Workmen Compensation's Act, 1923, against the order dated 02.01.2006 made in WC.No.239 of 2005 on the file of the Commissioner for Workmen's Compensation Deputy Commissioner of Labour II, Chennai.

For Appellant : Ms.R. Srividya

For Respondents: Mr.F. Terry Chellaraja

J U D G M E N T

The award of compensation passed by the Tribunal and Workmen Compensation No.239 of 2005 on the file of the Commissioner for Workmen Compensation (DCL-II) at Chennai, dated 02.01.2006 is under challenge in this appeal.

2. The respondent/Insurance Company is the appellant before this Court.

3. According to the first respondent, while he was working as a cleaner in the lorry bearing Registration No.TN-21-Y-34744 owned by the second respondent met with an accident, and he sustained grievous and multiple injuries. That he was admitted in Stanley Government Hospital at Chennai for ten days as an in-patient. On the basis of the permanent disability due to the

accident, filed a claim petition for compensation of a sum of Rs.4,00,000/-.

4. The appellant/Insurance Company denied the statement. In order to prove the claim, the first respondent/claimant examined himself as PW1, Dr.Thiyagarajan as PW2 and marked Exs.P1 to P7. No witnesses were examined nor documents marked on the side of the respondents. After considering the evidence of the 1st Respondent/Claimant as P.W.1 and P.W.2, Doctor; and after scrutinizing the documentary evidence, the Tribunal passed an award of compensation of a sum of Rs.1,64,638/- (One Lakh Sixty Four Thousand Six Hundred and Thirty Eight Only).

5. According to the Appellant/Insurance Company, the second respondent has not proved that he was employed as a Cleaner and also employer - employee relationship. He was traveling as a passenger beyond the capacity permitted and in breach of the policy conditions and therefore, the appellant/Insurance Company is not liable to pay any compensation. On the basis of the grounds raised the following substantial questions of law were framed:

"(i) The learned Commissioner has erred in holding that the petitioner was a workman traveling in the course of employment as a Cleaner when there was no evidence placed before the Court by the injured workman and also erred in holding that he had suffered loss of earning capacity at 35% when there was no material evidence placed in accordance with law.

(ii) The learned Commissioner has failed to note that the petitioner and the lady were seated in the Cabin, and 3 passengers were seated on the body of the lorry and he did not know the name of the driver, the name of the passengers or why and how and to which place they were proceeding and hence his oral evidence cannot be accepted.

(iii) The learned Commissioner has failed to note that the circumstance and probability of the case reveal that the petitioner could not have been a cleaner or associated with the operation of transport vehicle when he had no knowledge about a trip sheet or why and for what purpose it was carried in the vehicle."

6. The learned counsel appearing for the Appellant/Insurance Company contended that, beyond the seating capacity, the 1st respondent/claimant, three passengers and a lady member seated in the vehicle. Therefore, it shall be considered as clear breach of policy condition and the liability fastened on the Insurance Company is bad in law. The 1st respondent/claimant has also failed to prove that he was employed, as there is no proof for the employment. In the absence of any proof, the Tribunal ought not to have awarded compensation to the third party under Workmen Compensation's Act, 1923.

7. I have considered the materials on record. From the perusal of the evidence of PW1, it is noticed that, a clear statement was made that he was employed as the cleaner and the accident had taken place during the course of employment. Ex.P1 is the First Information Report; Ex.P3 is the Charge Sheet; Ex.P4 is the R.C.Book; Ex.P6 is the Driving Licence from the perusal of these documents, it is seen that there was an accident involving the vehicle bearing Registration No.TN-Y-34744 belonging to the first respondent on 19.08.2004 in which the claimant suffered injuries. Ex.P2 discharge summary, Ex.P7 Disability Certificate substantiate the same. The owner of the lorry did not appear before the authority and was set-exparte. There is no contra evidence to dispute the employment status of the claimant. In the absence of any evidence by the employer, it shall be construed that the claimant was employed as a cleaner in the lorry.

8. In view of the discussions above, the employment status of the claimant, manner of accident and disability suffered by the claimant are stand proved.

9. During relevant period, Insurance policy Ex.P5 covers the vehicle involved in the accident and thereby, the Insurance Company is liable to pay the compensation. The findings of the Commissioner for Workmen Compensation is based on reasons and legal evidence.

10. Insofar as the quantum of compensation is concerned, the monthly income was fixed as per the Minimum Wages Act, 1948. By applying the relevant factor, the authority has rightly arrived at computed the quantum of compensation. I do not find any infirmity in the order passed by the Authority. The substantial question of law raised by the appellant are answered in the negative.

11. In the result, the Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

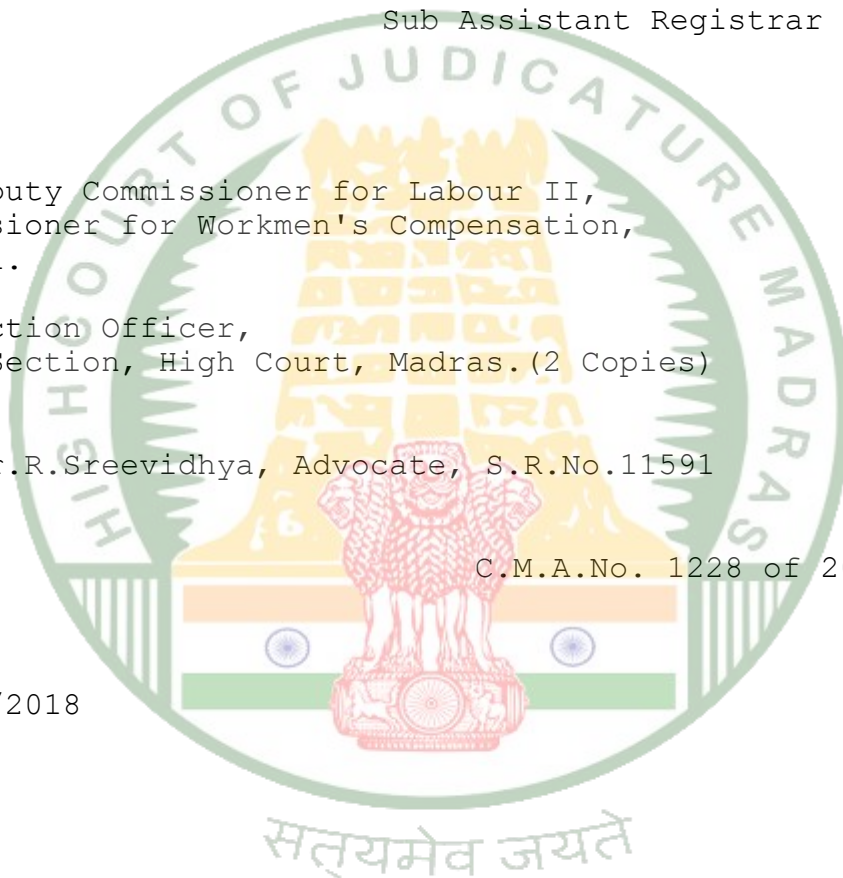
To

1. The Deputy Commissioner for Labour II,
Commissioner for Workmen's Compensation,
Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras.(2 Copies)

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.11591

C.M.A.No. 1228 of 2006

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