

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2389 of 2010
and M.P.No.1 of 2010

The Oriental Insurance Co. Ltd.,
Motor Third Party Cell,
No.8, Esplanade,
Chennai - 600 108. Appellant/2nd Respondent

Vs.

1. S. Radha alias Radhakrishnan1st Respondent/Applicant
2. R.Bathmavathi 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 24.04.2006 and 10.05.2006 passed in W.C.No.106 of 2005 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

J U D G M E N T

Aggrieved over the award of compensation made by the Commissioner for Workmen's Compensation-I, Chennai - 6, in W.C.No.106 of 2005 dated 24.04.2006, the Insurance Company has preferred this Civil Miscellaneous Appeal.

2. While admitting the Civil Miscellaneous Appeal by order dated 08.09.2010, this Court has framed the following substantial questions of law:-

1. Whether the learned Deputy Commissioner is correct in awarding compensation to the first respondent herein when there was no employer and employee relationship?

2. Whether the learned Deputy Commissioner is correct in assessing the loss of earning at 75% which has not been assessed as per Schedule-I Part-II of the Workmen's Compensation Act?

3. Whether the learned Deputy Commissioner is correct in awarding interest at 12% per annum from the date of accident till date of deposit and directed the Appellant to pay the interest amount also?

2. According to the claimant/1st respondent, he was employed as a driver of the lorry bearing registration No. No.TNR-2016 owned by the 2nd respondent, and during the course of his employment, he met with an accident on 30.12.2004. The said vehicle was insured under appellant/ Insurance Company.

3. To prove the claim, the claimant has examined himself as P.W.1 and the Doctor, who treated him, was examined as P.W.2 and marked documents as Exs.A1 to A7. There is no evidence on the side of the 2nd respondent/owner of the vehicle to deny the employment.

4. On the basis of the First Information Report (FIR), Ex.A1, the Tribunal came to the conclusion that the driver of the offending lorry has driven the vehicle in a rash and negligent manner and thereby caused the accident and that the claimant had suffered injuries in the said accident. In view of Ex.A2, insurance policy, the Tribunal has held that the insurance company is liable to pay compensation.

5. According to the appellant/Insurance Company, the injured claimant was the husband of the 2nd respondent/owner of the vehicle. But, to prove the plea raised before the Court, the insurance company has failed to let in any evidence by producing sufficient materials to show that the claimant/1st respondent and the 2nd respondent are the husband and wife and there is no employer-employee relationship between them and therefore, the insurance company is not liable to pay compensation.

6. In the absence of any evidence to substantiate the plea raised by the appellant, I do not find any infirmity in the order dated 24.04.2006 in W.C.No.106 of 2005 passed by the Commissioner for Workmen's Compensation-I, Chennai-6. The first substantial question of law in respect of employer-employee relationship is answered in the negative. In the absence of any contra evidence, the second substantial question of law as to assessment of loss of earning capacity is also answered in the negative.

7. Insofar as the interest is concerned, as per Section 4-A of the Employee's Compensation Act, 1923, the claimant is entitled to interest after 30 days of the date of accident. This entitlement is well settled by the decision of the Larger Bench of the Hon'ble Supreme Court in Pratap Narain Singh Deo vs Shrinivas Sabata and another reported in 1976 A.C.J.141, wherein, it was held that the word "falls due" as specified under Section 4-A of the Employee's Compensation Act, 1923, denotes the date of accident and not the date of order passed by the authority. The Tribunal has rightly decided that the claimant is entitled for interest after 30 days from the date of accident. Therefore, I do not find any error in the award of interest from the date it fell due. The third substantial question of law is also answered against the appellant.

8. In the result, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner for Workmen's Compensation - I
Deputy Commissioner of Labour-I,
Chennai - 6.

Copy to

The Section Officer,
VR Section,
High Court, Madras. (2 Copies)

+1cc to Mr.R.Sivakumar, Advocate Sr.20767

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srg 16/05/2018