

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 24-01-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.Nos.2617 & 2618 OF 2009

The National Insurance Co.Ltd.,
Motor Third Party Claims Cell,
751, Mount Road,
Chennai.

Appellant in both appeals

-vs-

1.K.Gopal
2.V.Margabandu (Given up)
3.P.Rajendran
4.Kala
5.Minor Raveena
6.Minor Priya
7.Minor Yuvaraj
8.Minor Nandhini
9.Jayammal

...Respondents in C.M.A.No.2617/2009

(Respondents 5 to 8 represented through
their mother and guardian 4th respondent
Kala)

1.Murugan
2.V.Margabandu (Given up)
3.P.Rajendran
4.Kala
5.Minor Raveena
6.Minor Priya
7.Minor Yuvaraj
8.Minor Nandhini
9.Jayammal

...Respondents in C.M.A.No.2618/2009

(Respondents 5 to 8 represented through
their mother and guardian 4th respondent
Kala)

C.M.A.No.2617 of 2009 is filed against the award, dated
11.05.2009, passed in W.C.No.387 of 2006 on the file of
Commissioner for Workmen's Compensastion-2-cum-Deputy
Commissioner of Labout-2, Chennai.

C.M.A.No.2618 of 2009 is filed against the award, dated 11.05.2009, passed in W.C.No.393 of 2006 on the file of Commissioner for Workmen's Compensastion-2-cum-Deputy Commissioner of Labout-2, Chennai.

For appellant in both appeals : Mr.S.Vadivel

For respondent 1 in both appeals : Mr.K.Premkumar

JUDGMENT

These appeals are directed against the award passed by the authority under the Workmen's Compensation Act, dated 11.05.2009.

2.. According to the appellant-insurance company, the claimants were not employees under the injured, namely, V.Margabandu, the reason being that the accident had taken place on 30.09.2003, whereas, the insurance policy was transferred in favour of the said Margabandu only on 07.10.2003; and, therefore, by no stretch of imagination, the claimants could be construed as employees under Margabandu and it could be safely presumed that prior to 07.10.2003, they would be employees under the previous owner, namely, P.Rajendran, third respondent herein. Since by Ex.A-7, Legal Notice, they have categorically claimed that they were employees under Margabandu, the insurance cover will operate through 07.10.2003 and it will not cover the date of accident viz., 30.09.2003. Therefore, there is no privity of contract between the appellant insurance company and the employer, namely, Marabandu, on the date of accident. In such circumstances, the employer-employee relationship was not in existence between Margabandu and the claimants on the date of accident i.e., 30.09.2003. The authority under the Act has failed to consider this aspect of employer-employee relationship and it erroneously awarded compenation on the ground that the claimants continued to be the employees in the same vehicle, which was owned by the third respondent and later by the first respondent. In support of his contention, learned counsel for the appellant would rely on a judgment in M/s.Complete Insulations (P) Ltd. v. New India Assurance Company Ltd., AIR 1996 SC 586, wherein, a Larger Bench of the Hon'ble Supreme Court has held that transferee cannot be said to be the third party with regard to the vehicle and the insurer would not be liable to make good the damage to the vehicle. Therefore, according to the learned counsel, liability cannot be fastened on the insurance company and that it is not liable to pay any compensation to the claimants. He would also rely upon another decision of this Court in United India Insurance Company Limited v. M.Periyasamy and Another, 2008 (2) TNMAC 502, wherein, it has been held that there is no privity of contract between the

claimant and the employer, as he has not served under the employer on the date of accident, and, second, Section 157 of the Motor Vehicles Act is applicable only to third party and not in respect of the parties having contractual relationship. According to him, in this case, there is no employer-employee relationship and the claimants shall be considered as unauthorised persons and, therefore, there is no privity of contract and they are not entitled to claim compensation under the Workmen's Compensation Act.

3. Per contra, learned counsel for the respondents-claimants would submit that the claimants have actually worked under both the owners of the vehicle and the insurance policy was transferred in favour of the first respondent only on 07.10.2003. However, Ex.A-3, the certificate issued by the transport department, transferring the ownership of the vehicle in favour of Margabandu would clearly show that transfer has taken effect from 08.09.2003. Therefore, on the date of accident, i.e., 30.09.2003, the claimants were actually employed under the first respondent, namely, Margabandu, however, by way of abundant caution, they have impleaded third respondent-previous owner also in the claim petition. As such, the finding of the authority is very much justified and the employees are entitled to compensation.

4. I have considered the rival submissions and perused the material on record.

5. The case of the insurance company is that the claimants are not workmen under the first respondent, in view of the transfer of policy having taken effect from 07.10.2003. However, Ex.A-3, transfer of ownership, clearly shows that the transfer has taken effect from 08.09.2003. In that event, it can be safely concluded that on the date of accident i.e., 30.09.2003, the said Margabandu, first opposite party, was the owner of the vehicle and the claimants were employed under him. In such a circumstance, the plea raised in the appeals by the insurance company is not sustainable. The finding of the authority that there existed employer-employee relationship between the first opposite party and the claimants is established. Therefore, I do not find any infirmity in the order passed by the Commissioner for Workmen's Compensation. The award of compensation is not disputed under other aspects. Learned counsel for the appellant would submit that the insurance company has deposited the entire award amount. The said amount is permitted to be withdrawn by the respondents-claimants.

6. Civil Miscellaneous Appeals are dismissed. No costs.
Consequently, the connected M.P.Nos.1 of 2009 are also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dixit

To

The Commissioner for Workmen's Compensation-2-
cum-Deputy Commissioner of Labour-2,
Chennai.

Copy to
The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+2ccS to Mr.K.Premkumar, Advocate, S.R.No.6415 & 6416

+2ccS to Mr.S.Vadivel, Advocate, S.R.No.5319 & 5320

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MG(CO)
CS/10/04/18



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