

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-03-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2324 OF 2012

M/s.Oriental Insurance Company Ltd. ...Appellant

-vs-

1.K.Chandrasekar
2.P.Palanisamy

... Respondents

Appeal against the order, dated 12.03.2012, passed in W.C.No.361 of 2005, on the file of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem.

For appellant : Mr.R.Sivakumar

For respondents : Mr.R.M.D.Nasrullah

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award of compensation passed under the Workmen's Compensation Act in W.C.No.361 of 2005, dated 12.03.2012, on the file of Commissioner for Workmen's Compensation, Salem.

2. Insurance company is the appellant. According to the appellant, the accident has taken place on 04.12.2003, in which, the lorry insured by them bearing registration No.TN-39-F-5776 met with an accident and capsized. In the said accident, driver, cleaner and other employees of the second respondent employer were injured.

3. The present claim petition is filed by the first respondent. But, in the F.I.R., the name of first respondent was not found. Therefore, the claim, as made by the first respondent, according to the appellant, is not maintainable and that the appellant is not liable to pay any compensation for a person, who was not connected with the accident. Further, the name of the cleaner was shown as Chinnathambi, but the claimant's name is Chandrasekar and, therefore, the appellant need not pay any compensation for the above claim.

4. Controverting the arguments made by the learned counsel appearing for the appellant, learned counsel for the first respondent/claimant would submit that the employment status is the fact privy to the employee and employer, namely, first and second respondents. In so far as the second respondent employer is concerned, there is a categorical admission that the claimant was working under him as a Coolie and was doing loading and unloading work. It is also admitted by the second respondent- employer that the claimant was injured in the accident and the he submitted the claim form to the appellant-insurer. Therefore, the insurance company is liable to pay the compensation.

5. Heard both sides.

6. In this appeal, the following substantial questions of law are formulated :

1. Whether the learned Deputy Commissioner is correct in coming to the conclusion that the first respondent herein was a cleaner in the truck bearing registration No.TN-39-F-5776 under the second respondent, and sustained injuries during the course of his employment ?

2. Whether the learned Deputy Commissioner is correct in fixing the liability on the appellant when the first respondent's name does not find a place in the First Information Report ?

3. Whether the learned Deputy Commissioner is correct in fixing the liability on the appellant, when the first respondent herein did not examine the driver or co-worker to prove that he sustained injuries during the course of his employment ?

4. Whether the learned Deputy Commissioner is correct in fixing the loss of earning power at 24% which has not been assessed as per Schedule-I Part-II of the Workmen's Compensation Act ?

5. Whether the learned Deputy Commissioner is correct in assessing the loss of earning power at 30%, when AW-2 assessed the physical disability only ?

6. Whether the learned Deputy Commissioner is correct in awarding interest at the rate of 12% per annum from the date of accident, if the insurance company/appellant is not depositing the compensation amount within 30 days from the date of receipt of the order copy ?

7. The accident is admitted. The involvement of the lorry belonging to the second respondent and the injuries suffered to his employees are all admitted too. Now, the only question is, whether the claimant was an employee of the second respondent and also whether he suffered injuries in the said accident to make the insurance company liable for payment of compensation.

8. On the side of claimant, he examined himself as P.W.1 and doctor as P.W.2 and marked six documents. The second respondent, who was examined as R.W.1, would affirm in his evidence that the claimant was employed under him and was working as a loadman, doing loading and unloading works, and that he submitted a claim form to the insurance company. When there is a categorical evidence to show that the claimant was employed under the second respondent, the insurance company cannot deny the liability, only because the claimant's name was not found in the F.I.R. Therefore, it is well proved by oral and documentary evidence that the claimant was employed under the second respondent and that he suffered injuries in the accident that had happened on 04.12.2003. The appellant-insurance company admittedly insured the vehicle involved in the accident and thereby the insurance company is liable to pay compensation to the claimant-workman, covered under the policy. I do not find any infirmity in the findings of the Commissioner for Workmen's Compensation.

9. In view of my above findings, the questions of law raised by the insurance company are answered in the affirmative and the claimant-first respondent is entitled to compensation.

10. Civil Miscellaneous Appeal merits no consideration and is dismissed. No costs. Consequently, the connected M.P.No.1 of 2012 is also dismissed.

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Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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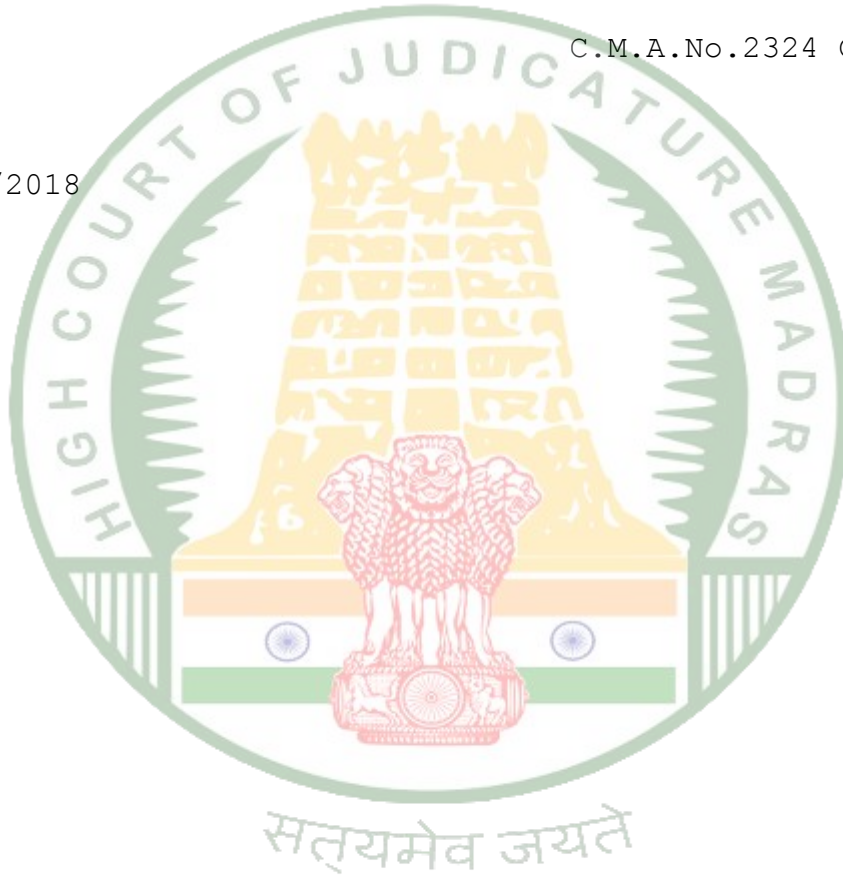
Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour),
Salem.

+lcc to Mr.R.Sivakumar, Advocate Sr.21251

+lcc to Mr.Rmd.Nasrullah, Advocate Sr.21646

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