



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

CMA(MD) No.1015 of 2016ANDCMP(MD) No.9130 of 2016

Branch Manager  
The National Insurance Company Limited.,  
Chennai Divisional Office VIII,  
"Mamanji Centre",  
S-7, Thiru Vi Ka Industrial Estate,  
Guindy, Chennai - 600 032. .. Appellant/Respondent No.2

-Vs-

1.R.Natarajan .. Respondent No.1/Petitioner

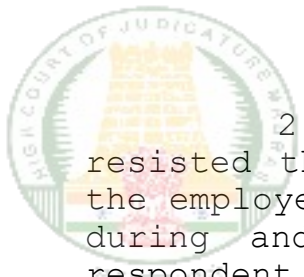
2.P.Prabhakar .. Respondent No.2/Respondent No.1

PRAYER: Civil Miscellaneous Appeal - filed under Section 30 of Workmen Compensation Act against the award dated 24.03.2015 made in W.C.No.299 of 2015 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Trichy served on 15.06.2015.

For Appellant : Mrs.K.R.Shivashankari  
For R1 : No appearance

J U D G M E N T

The appellant is the second respondent in W.C.No.299 of 2015. The first respondent/claimant filed the said petition under Workmen's Compensation Act claiming a sum of Rs.4,00,000/- for the injuries sustained by him in the accident that occurred on 05.06.2005 during and in the course of his employment under the second respondent. According to the first respondent on 05.06.2005, while he was driving the vehicle belonging to the second respondent at about 4.30 p.m, the accident occurred. The first respondent sustained injuries and fractures. He was employed as Driver by the second respondent. The first respondent was paid salary of Rs.3500/- per month and a sum of Rs.50/- per day as batta. Due to the injuries, he is not able to do work as he was doing earlier. He suffered permanent disability. The vehicle belonging to the second respondent was insured with the appellant. Hence, the second respondent and the appellant are liable to pay compensation to the first respondent.



2. The second respondent remained ex-parte. The appellant resisted the claim and contended that the first respondent is not the employer of the second respondent and the accident did not occur during and in the course of the employment under the second respondent. The first respondent did not have valid driving licence to drive the commercial vehicles. At the time of accident more persons travelled in violation of permit and policy conditions. In any event, the amount claimed by the first respondent is excessive.

3. The Commissioner, considering the pleadings and evidence let in by the parties, held that the first respondent was an employee of the second respondent and the first respondent sustained injuries in the accident that occurred on 05.06.2005 during and in the course of his employment under the second respondent and awarded a sum of Rs.1,73,996/- as compensation.

4. Against the said award, the present appeal is filed.

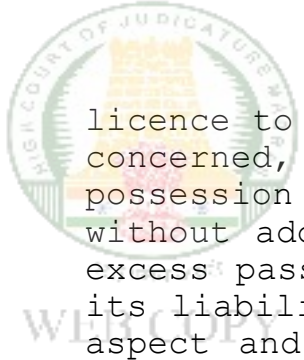
5. The contention of the learned counsel for the appellant is that the first respondent failed to prove that the accident occurred during and in the course of employment. The first respondent did not possess valid licence. By permitting more persons to travel in the Cabin, the respondents have violated the policy and permit conditions and the appellant is not liable to pay compensation. The amount awarded is excessive.

6. Though notice served on the first respondent claimant and his name is printed, there is no representation either in person or through counsel.

7. Heard the learned counsel appearing for the appellant and perused the materials on record.

8. The first respondent pleaded in the petition as well as let in evidence to prove that he was employee of the second respondent at the time of accident and the accident occurred during and in the course of employment. The second respondent remained ex-parte and did not deny that the first respondent was employed by him. The appellant has not let in any contra evidence to disprove the claim of the first respondent. The Commissioner, considering the pleadings and evidence let in by the parties, has rightly held that the first respondent was employee of the second respondent and the accident occurred only during and in the course of employment under the second respondent. Further, considering the evidence of Doctor and documents filed by the first respondent with regard to the injuries, the Tribunal, fixing 34% loss of earning capacity, fixing monthly income and applying formula, awarded total sum of Rs.1,73,996/- as compensation. There is no error warranting interference by this Court.

9. As far as the contention of the learned counsel for the appellant that the first respondent did not possess valid driving



licence to drive the commercial vehicle and did not possess Batch is concerned, it is now well settled that when a person is in possession of LMV driving licence, he can drive a commercial vehicle without additional endorsement and Batch. Similarly, permitting the excess passengers in the Cabin will not absolve the appellant from its liability. The Commissioner has considered the judgment on this aspect and rightly rejected the contention of the learned counsel for the appellant. There is no error in the judgment. This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected C.M.P.(MD) NO.9130 of 2016 is also dismissed.

Sd/-  
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-II)

CM

To,

1. The Commissioner of Workmen Compensation (Deputy Commissioner of Labour),  
Trichy

2.The Record Keeper, V.R. Section, (2 COPIES)  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to Mr.S.Srinivasa Raghavan, Advocate in SR No.82004

**CMA(MD) No.1015 of 2016**

**AND**

**CMP(MD) No.9130 of 2016**

NM/RSK/SAR 2/09.10.18/3P/5C