



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

WEB COPY

CMA(MD).No. 1074 of 2017 and
CMP(MD).Nos.10935 of 2017 and 6597 of 2018

The Branch Manager,
Tata AIG General Insurance Company Limited,
3rd Floor, North Block,
A.A.Towers, Bye-Pass Road,
Madurai - 16

: Appellant / 2nd respondent

Vs.

1.Saminathan ... 1st Respondent / Petitioner2.M.Satheeshkumar ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 (i) of Employees Compensation Act, to set aside the order dated 18.09.2017, made in E.C.No.76 of 2014 on the file of the Commissioner for Employee's Compensation / Deputy Commissioner of Labour, Dindigul.

For Appellant	:	Mr. B. Vijay Karthikeyan
For R1	:	Mr. D. Venkatesh
For R2	:	No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the order dated 18.09.2017, made in E.C.No.76 of 2014, on the file of the Commissioner for Employee's Compensation / Deputy Commissioner of Labour, Dindigul.

2. The appellant / Insurance Company is the second respondent in E.C.No.76 of 2014 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Dindigul. The first respondent is claimant and the second respondent is owner of the Car involved in the accident. The car was insured with the appellant. The first respondent / claimant has filed the said claim petition, claiming a sum of RS.25,00,000/- as compensation, for the injuries sustained by him in the accident, that took place on 08.07.2014.



3. According to the first respondent, he was working as an acting driver under the second respondent herein. The second respondent engaged him as a driver to drive his car from Maanur to Ottanchathiram and he has agreed to pay a sum of Rs.500/- per day and Rs.100/- as salary and batta. The first respondent as driver employed by the second respondent drove the car on 08.07.2014, from Maanur to Ottanchathiram. While the first respondent reached Sathirapatti railway gate, the car lost its control due to the burst of tyre and dashed against a tamarind tree on the right hand side of the road. The first respondent sustained grievous injuries on his right thigh. He took treatment and spent considerable amount for treatment and unable to do his work, as he was doing before the accident and therefore, claimed a sum of Rs.25,00,000/- as compensation against the appellant herein.

4. The second respondent herein remained ex parte before the Tribunal.

5. The appellant filed counter statement and contended that there is no employer - employee relationship between the second respondent and first respondent. The first respondent drove the car of the second respondent as a relative and not as an employee.

6. The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Dindigul, considering the pleadings oral and documentary evidence let in by the parties, held that the accident occurred during and in the course of the employment under the second respondent and awarded a sum of Rs.7,23,990/- as compensation as per the provisions of Workmen's Compensation Act.

7. Against the said award, the appellant / Insurance Company has come out with the present appeal.

8. On 06.12.2017, this Court admitted the Civil Miscellaneous Appeal on the following substantial questions of law:

"(i) Whether any person who was driving the vehicle at the time of accident can be termed as 'employee' and whether such a person can be said to be in employer - employee relationship with the insured irrespective of the fact there exist different relationship between them?

(ii) Whether the liability to pay interest under the Employees's Compensation Act arises after 30 days from the date of the accident or from the date of the accident itself?"



9. The learned counsel appearing for the appellant contended that there is no employer-employee relationship between the second respondent and first respondent and the first respondent failed to prove that he was employed as driver by the second respondent. The second respondent in Ex.R2-Claim Form claiming a compensation under own damages has stated that the first respondent is his relative, who is doing business. The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), failed to consider Ex.R2 - Claim Form in proper perspective, awarded the amount towards medical expenses, which is excessive, as the first respondent has duplicated and triplicated the medical bills. He further contended that the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), erred in awarding interest from the date of accident, while the liability to pay interest arises only after 30 days from the date of accident.

10. Per contra, learned counsel appearing for the first respondent contended that the first respondent has proved that he was employed by the second respondent as driver on the date of accident and even relatives can be employed as employee and it has been held that even son can be employee of his father. The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), has considered all the materials in proper perspective and has held that the accident occurred only during and in the course of employment and awarded compensation based on the documents and provisions of the Act and prayed for dismissal of this appeal.

11. I have heard the learned counsel appearing for the appellant and the first respondent and perused the materials available on record.

12. The appellant is denying his liability to pay the compensation on the ground that there was no employer employee relationship between the second respondent and the first respondent. The contention of the learned counsel appearing for the appellant in this regard is that the first respondent is a relative of the second respondent and he drove the vehicle belonging to the second respondent only as a relative and not as a driver. To substantiate the same, the appellant has relied on Ex.R2 - Claim Form submitted by the second respondent. The same is not binding on the first respondent. The appellant has not proved that the first respondent was not working as acting driver under the second respondent. The first respondent has stated that he was engaged by the second respondent for Rs.500/- and Rs.100/- per day, as salary and batta. There is no contra evidence let in by the appellant, except filing Ex.R2, which is against the first respondent. The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), considered the Medical Bills produced by the first respondent and



awarded compensation, which is just compensation. The appellant has not pointed out which are the bills duplicated and triplicated. It is well settled that the interest is payable from the date of accident and not after 30 days from the date of accident as contended by the appellant. The first respondent has proved employer-employee relationship and the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), considered all the materials on record in proper perspective and awarded the compensation, which is just and proper.

13. For the above reasons, the substantial questions of law are answered against the appellant.

14. In the result, this Civil Miscellaneous Appeal is dismissed, by confirming the order dated 18.09.2017, made in E.C.No.76 of 2014 on the file of the Commissioner for Employee's Compensation / Deputy Commissioner of Labour, Dindigul. No costs. Consequently, connected Miscellaneous Petitions are closed.

15. The appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this Judgment.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS-III)

To

1.The Commissioner for Employee's Compensation /
Deputy Commissioner of Labour,
Dindigul.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.B.Vijay Karthikeyan, Advocate, Sr.No.88294.

+1cc to Mr.D.Venkatesh, Advocate, Sr.No.88373.

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