



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2018

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

C.M.A.(MD) No.1257 of 2017 and
CMP(MD).Nos.3356 of 2018

National Insurance Company,
No.11, 92 Thevarpuram Road,
Tuticorin - 628 003

.. Appellant / R2

Vs.

1.Ganesan

.. 1st respondent / petitioner

2.G.Jayaraj

3.The Proprietor,
M/s. Shanthi Finance Corporation Ltd.,
46, Irulappan Street,
Sowcarpet, Chennai.

.. Respondents 2&3/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 30(i) of Workmen's Compensation Act, to set aside the order dated 12.09.2007 and received on 07.01.2008 made in WC.No.94 of 2004 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli.

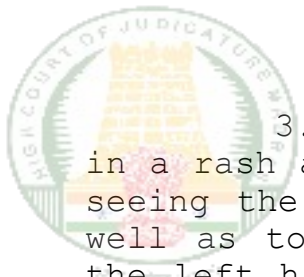
For Appellant : Ms.K.R.Shivasankari

For R2 : Mr.C.Karthick

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Order dated 12.09.2007, made in WC.No.94 of 2004, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli.

2. The appellant, Insurance Company is the second respondent in W.C.No.94 of 2004 on the file of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli. The first respondent, claimant filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation, for the injuries sustained by him in the accident that occurred on 14.11.2003 while he was working as a driver in a Mahindra Van bearing Regn. No.TN-72 A 9644 belonging to the second respondent herein.



3. On 14.11.2003 at 2.30 pm., the Government bus driven in a rash and negligent manner came in the opposite direction. On seeing the same, in order to avoid damage to the Mahindra Van, as well as to safeguard the passengers, the first respondent went to the left hand side of the road. At that time, Mahendra Van dashed against the electrical pole. Due to which, the first respondent as well as the occupants of the Van sustained injuries. The Mahindra Van was insured with the appellant and financed by the third respondent. Hence, the first respondent filed claim petition claiming a sum of Rs.5,00,000/- as compensation as against the second respondent as owner, the third respondent as financier and the appellant as insurer.

4. According to the first respondent, on the date of accident he was working as a driver under the second respondent and got salary of Rs.6,000/- per month. The accident occurred during and in the course of employment and the respondents 2 and 3 and the appellant are liable to pay the compensation.

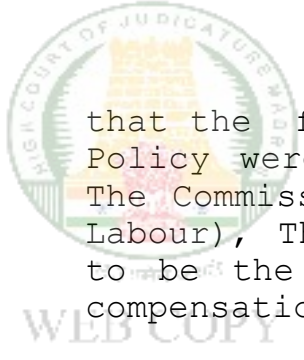
5. The second respondent filed counter statement and contended that on the date of accident, the first respondent was not employed as driver by the second respondent. He further sated that the second respondent sold the Mahindra Van to the first respondent even before the accident.

6. The appellant filed counter statement and contended that as per the terms of policy condition, only 12+ 1 passengers can travel in the van, but, at the time of accident, 29 persons travelled. The second respondent sold the vehicle by handing over all the necessary documents to the first respondent. On the date of accident, the second respondent was not owner of the Mahindra Van and first respondent was not an employee of the second respondent. The vehicle was not insured with the appellant and the appellant is not liable to pay compensation and prayed for dismissal of the claim petition.

7. The Third respondent filed counter and contended that he is not owner of the vehicle and he is not necessary party to the proceedings and prayed for dismissal of the claim petition against the third respondent.

8. Before the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli, the first respondent examined himself as PW.1 and examined Dr. Poovalingam as PW.2 and seven documents were marked as Exs. A1 to A7. The second respondent examined as RW.1 and on behalf of the appellant, Mr.A.Chandran, Assistant Manager examined as RW.2. The appellant did not let in any documentary evidence.

9. The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli, considering the oral and documentary evidence, especially the First Information Report, held



that the first respondent is owner of the vehicle. The RC book and Policy were not transferred in the name of the first respondent. The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli, held that the second respondent continued to be the owner of vehicle and awarded a sum of Rs.36,693/- as compensation and directed the appellant to pay the same.

10. Against the said Award, the appellant, Insurance Company has come out with the present appeal.

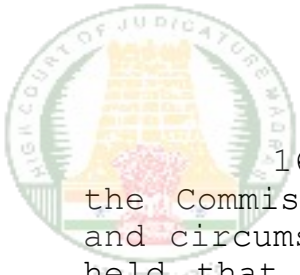
11. The learned counsel appearing for the appellant contended that the first respondent was not driver under second respondent at the time of accident. The first respondent is not an employee of the second respondent and the second respondent is not employer, as defined in the Act. The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli, having held that the first respondent is owner of the Mahindra Van at the time of accident, erred in holding that the second respondent continued to be the owner, as the Registration certificate was not transferred in the name of the first respondent. The first respondent has not proved that he is an employee under the second respondent and the accident occurred during and in the course of the employment.

12. The first respondent remained absent before this Court, and therefore, he was set ex parte as per the order of this Court, dated 06.02.2018.

13. The learned counsel appearing for the second respondent contended that the first respondent is not an employee of the second respondent. He further contended that on the date of accident, the second respondent sold the vehicle to the first respondent. The first respondent, who is the owner of the vehicle, drove the Lorry and caused accident and hence, the second respondent is not liable to pay any compensation.

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

15. The question to be decided in the present appeal is whether the first respondent proved the employer - employee relationship between the respondents 2 and 1. The first respondent claimed compensation stating that he was employed as driver at the time of accident by the second respondent and the accident occurred during and in the course of employment. On the other hand, the second respondent denied that the first respondent was employed as driver at the time of accident. The second respondent has stated that he already sold the Mahindra Van to the first respondent on 08.01.2003 itself and handed over the documents for transfer and the Registration Certificate is in the name of the first respondent. He also deposed to that effect.



16. From the materials available on record, it is seen that the Commissioner for Workmen's Compensation considering the facts and circumstances of the case and Ex.P1 - First Information Report, held that the first respondent purchased the Van involved in the accident from the second respondent. The Commissioner for workmen's Compensation having held so, failed to consider the evidence of second respondent, who denied that the first respondent was employed by him on the date of accident. The first respondent in his evidence admitted that Mahindra Van was purchased by his brother Murugan. In view of such admission, the first respondent could not have been employed by second respondent, but, only by his brother Murugan. Based on this evidence, I hold that there was no employer-employee relationship between the respondents 2 and 1.

17. In view of the above facts, this Civil Miscellaneous Appeal is allowed, by setting aside the order dated 12.09.2007, made in WC.No.94 of 2004, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Thirunelveli. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour),
Thirunelveli.

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

+lcc to Mr.S.Srinivasa Raghavan Advocate in SR.No.80112
+lcc to Mr.C.Karthick Advocate in SR.No.79922

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TRP