

IN HIGH COURT OF JUDICATURE AT MADRAS

|               |            |
|---------------|------------|
| Reserved On   | 03.10.2019 |
| Pronounced On | 16.10.2019 |

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

**C.M.A.No.2689 of 2002**

N.Jayaraman

...appellant

vs

1.S.Selvan

2.S.M.Mohan

3.The Branch Manager,  
The New India Assurance Co-Ltd,  
12, New Hospital Road,  
Gobichettipalayam.

4.S.Vijayakumar

...Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to call for the records relating to the order dated 30.09.2002 (Received on 06.10.2002) made in W.C.No.42 of 2000 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem – 7 and set aside the same.

For appellant : Mr.N.Manokaran  
For R1 & R4 : Not ready in notice  
For R2 : died  
For R3 : No appearance

**J U D G M E N T**

The appellant/claimant is aggrieved by the impugned order dated 30.09.2002 passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem in W.C.No.42 of 2000.

2.By the impugned order, the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Salem has dismissed W.C.No.42 of 2000 filed by the appellant/claimant.

3.The appellant had earlier filed a claim petition before the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem on 15.12.2000 against 1<sup>st</sup> to 3<sup>rd</sup> respondents in W.C.No.42 of 2000.

4.The 1<sup>st</sup> respondent is driver of the lorry which was involved in the accident. The 2<sup>nd</sup> respondent is the owner of the lorry while 3<sup>rd</sup> respondent is the insurer. The 4<sup>th</sup> respondent is the subsequent owner of the lorry allegedly involved in the accident. The 4<sup>th</sup> respondent was subsequently impleaded.

5.The 2<sup>nd</sup> respondent had denied the liability to pay compensation stating that the claim petition was filed with an ulterior motive to wrongly claim compensation from him. The fact that there was no FIR filed itself showed that the claim was not bonafide. The 2<sup>nd</sup> respondent stated that it is only after receipt of the claim petition, the 2<sup>nd</sup> respondent came to know about the alleged accident.

6.The 2<sup>nd</sup> respondent had also denied that the appellant was employed as conductor/cleaner of the lorry. The said counter was adopted by the 1<sup>st</sup> respondent driver of the lorry.

7. Pending the aforesaid proceeding, the 2<sup>nd</sup> respondent died on 19.11.2001. None of his legal heirs were impleaded in the said proceeding.

8. The 3<sup>rd</sup> respondent insurance company also denied its liability in the counter filed on 01.03.2000. The 3<sup>rd</sup> respondent further stated that the 2<sup>nd</sup> respondent had sold the lorry to the 4<sup>th</sup> respondent S.Vijayakumar who had however not taken steps to effect name transfer in his favour though the entire sale consideration was paid to the 2<sup>nd</sup> respondent.

9. It was stated that since the vehicle was sold, the 2<sup>nd</sup> respondent did not have an insurable interest while the 4<sup>th</sup> respondent had no insurance cover. It was submitted either way the 3<sup>rd</sup> respondent cannot be made liable.

10. It was submitted that the 4<sup>th</sup> respondent did not get the benefits of the policy transferred in his favour with regard to the said lorry. It was further stated that at the time of accident, the 2<sup>nd</sup> respondent had no insurable interest in the lorry.

11. Under these circumstances, the appellant had filed a petition to implead the 4<sup>th</sup> respondent. The 4<sup>th</sup> respondent was thereafter impleaded consequent to which the claim petition was amended.

12. In the said proceedings, the 4<sup>th</sup> respondent filed a memo on 19.02.2002 and adopted the counter filed by the 2<sup>nd</sup> respondent on 04.07.2000.

13. On 27.11.2001, the 4<sup>th</sup> respondent was set exparte for not filing counter. Therefore, the 4<sup>th</sup> respondent filed I.A to set aside the exparte order dated 27.11.2001 passed against him. Another I.A was also filed to reopen the evidence of PW1.

14. Thereafter, the 4<sup>th</sup> respondent also filed separate counter stating that on the date of accident, the vehicle was not in the name of the 4<sup>th</sup> respondent.

15. The 4<sup>th</sup> respondent denied his liability by stating that the lorry in question was insured in the name of the 2<sup>nd</sup> respondent on

the date of accident and therefore no liability can be fastened on him. The 4<sup>th</sup> respondent also filed a memo to inform that the 2<sup>nd</sup> died on 19.11.2001.

16.The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem has dismissed the claim petition with the following observations.

*The appellant did not file any medical certificate to substantiate he was treated at the time of accident. The appellant has not given any FIR pursuant to the said accident.*

*The P.W.2 doctor Sachitha Nantham who was examined as witness stated that the appellant came up for getting the disability certificate on 21.02.2002. The said doctor has not given treatment to the appellant at the time of accident.*

*The appellant failed to prove he was a driver/cleaner of the lorry bearing reg. No. TNC 3796 of the 2<sup>nd</sup> respondent and the accident said to have on 28.07.1998, while working with the 2<sup>nd</sup> respondent.*

17.This case was listed for hearing today. From records of the case, it is noticed that the appellant has failed to implead the legal representatives of the deceased 2<sup>nd</sup> respondent S.M.Mohan, even though he had earlier died on 19.11.2001 before the impugned order was passed.

18.Only the 3<sup>rd</sup> respondent has been served with notice in the present Civil Miscellaneous Appeal and their counsels Mr.D.Venugopal and Mr.V.Ramakrishnan appeared on 24.06.2003. However, there is no representation for the 3<sup>rd</sup> respondent today. Notice on the 1<sup>st</sup> and the 4<sup>th</sup> respondent have remained un served.

19.There were notes in the court bundle to the effect that the appellant has not taken steps to bring on record the legal representatives of the deceased 2<sup>nd</sup> respondent, implying the appellant has taken time to implead the legal representatives of the deceased 2<sup>nd</sup> respondent and that an impression was created before this Court as if the 2<sup>nd</sup> respondent died during the pendency of the present appeal. The appellant has not taken steps to bring in the legal representatives of the deceased 2<sup>nd</sup> respondent nor has taken steps to serve notice on the other two respondents on whom the notice has not been served till date.

20.The appellant has been negligent in prosecuting the present appeal and therefore the present appeal is liable to be dismissed as such with cost. However, considering the fact that the

appellant was worker, I am inclined to overlook these short comings and proceed to dispose the present appeal as I intend to remand the case back to the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem.

21.I have considered the overall facts and circumstances of the case. It is evident that on the date of accident, the vehicle was in the name of the deceased 2<sup>nd</sup> respondent as otherwise, the 2<sup>nd</sup> respondent would have stated otherwise.

22.In this case, the appellant said to have met with an accident on 29.07.1998 while the vehicle was being reversed in the campus of M/s.Shanthi Agencies, Pappampatty by the 1<sup>st</sup> respondent lorry driver and had negligently injured the appellant.

23.There is no proof as to whether the appellant was actually knocked down by the 1<sup>st</sup> respondent and whether the appellant was an employee of the 2<sup>nd</sup> or the 3<sup>rd</sup> respondent on the date of the accident.

24.It the case of the appellant that he was unconscious and was admitted in Singirpalayam Unani Hospital by the 1<sup>st</sup>

respondent and abandoned there without registering an FIR with the Police.

25.Later, the appellant's family got to know and got him discharged to undergo surgery at Vedanayagam Private Hospital, Coimbatore.

26.The Case summary and Discharge Record on 16.09.1998 which was marked as Exhibit Ex A 7 reads as follows:-

DIAGNOSIS : NON UNION OF TROCHANTRIC FRACTURE RIGHT SIDE

Three months ago met with an Road traffic accident and had treatment elsewhere.

At Present Right lower Limb-3 cm shortening  
Externally rotated  
Active dorsiflexion of right angle  
and  
toes not possible.

X-RAY right HP with femur-Non union of trochantric fracture with wide separation of fragments.

After explaining the risks of operation and present status of fracture, the patient posted for following surgery.

STAGE I On 01.09.98 Tibial pin traction approach  
weight added up to 7 kg

STAGE II On 05.09.98 under Epidural anaesthesia  
OPEN REDUCTION and  
internal fixation with DHS plate  
and screw under IMAGE  
intensifier control supplemented  
with bone grafting.

Derotation boot applied for 6 weeks.

Antibiotics and Analgesics given. Post operative  
period uneventful.

CHECK X-RAY : Right hip with femur and  
shows good fracture  
reduction and stable fixation  
: Wood healed.

27.It is noticed that on the date of the alleged accident, the  
vehicle was in the name of the 2<sup>nd</sup> respondent. It had not been  
transferred to the 4<sup>th</sup> respondent.

28.The 4<sup>th</sup> respondent was impleaded later in the  
proceedings before the Commissioner for Workmen's  
Compensation (Deputy Commissioner of Labour), Salem in view of  
the vague counter filed by the 3<sup>rd</sup> respondent Insurance Company.

29.Though there is no representation for the 1<sup>st</sup> respondent

driver or the 4<sup>th</sup> respondent or the legal representatives of the deceased 2<sup>nd</sup> respondent in absence of impleading them, it is noticed that the whole confusion in the proceedings arose on account of the vague counter filed by the 3<sup>rd</sup> respondent before the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem.

30.The 3<sup>rd</sup> respondent stated that the vehicle had been sold to the 4<sup>th</sup> respondent without giving particulars as to when it was sold to the 4<sup>th</sup> respondent. The deceased 2<sup>nd</sup> respondent had merely denied the liability without letting in any evidence.

31.The deceased 2<sup>nd</sup> respondent in his counter stated that there was no employer and employee relationship with the appellant/claimant and therefore, the appellant was not entitled any compensation.

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32.Even though this stand of the deceased 2<sup>nd</sup> respondent was adopted by not only the 1<sup>st</sup> respondent driver but also by the 3<sup>rd</sup> respondent and also by the 4<sup>th</sup> respondent, this defence was not established as during the pendency of the proceedings before the

Commissioner for Workmen's Compensation, the 2<sup>nd</sup> respondent owner of the lorry died on 19.11.2001.

33.The 3<sup>rd</sup> respondent has also not clearly stated as to when the vehicle and the insurance were transferred in the name of the 4<sup>th</sup> respondent.

34.In view the confusion created by the 3<sup>rd</sup> respondent, which led under impleading the 4<sup>th</sup> before Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem, the enquiry was completely derailed.

35.Who was the de jure and defacto owner of the vehicle is also irrelevant. If the appellant was injured by the lorry insured with the third respondent, it cannot deny its liability.

36.However, whether lorry in question was involved in the accident can be denied only by the 1<sup>st</sup> respondent driver and not by the other witness who were examined before the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour),

Salem. The 2<sup>nd</sup> respondent who died could have given evidence. However, he died before he could depose evidence.

37. Therefore, I am of the view that the order passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem has to be interfered. Accordingly, the impugned order is set aside and the case is remitted back to the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem for denovo consideration.

38. The case is therefore remitted back to the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem for re-adjudicating the claims denovo.

39. It is noticed that the claim petition is of the year 1999 and 21 years lapsed since the date of the alleged accident on 29.07.1998. Therefore, the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Salem may dispose the claim petition of the appellant within a period of six months from the date of receipt of a copy of this order.

40.The present Civil Miscellaneous Appeal is disposed by way of remand. No cost.

16.10.2019

Index :Yes/No  
Internet :Yes/No  
jen

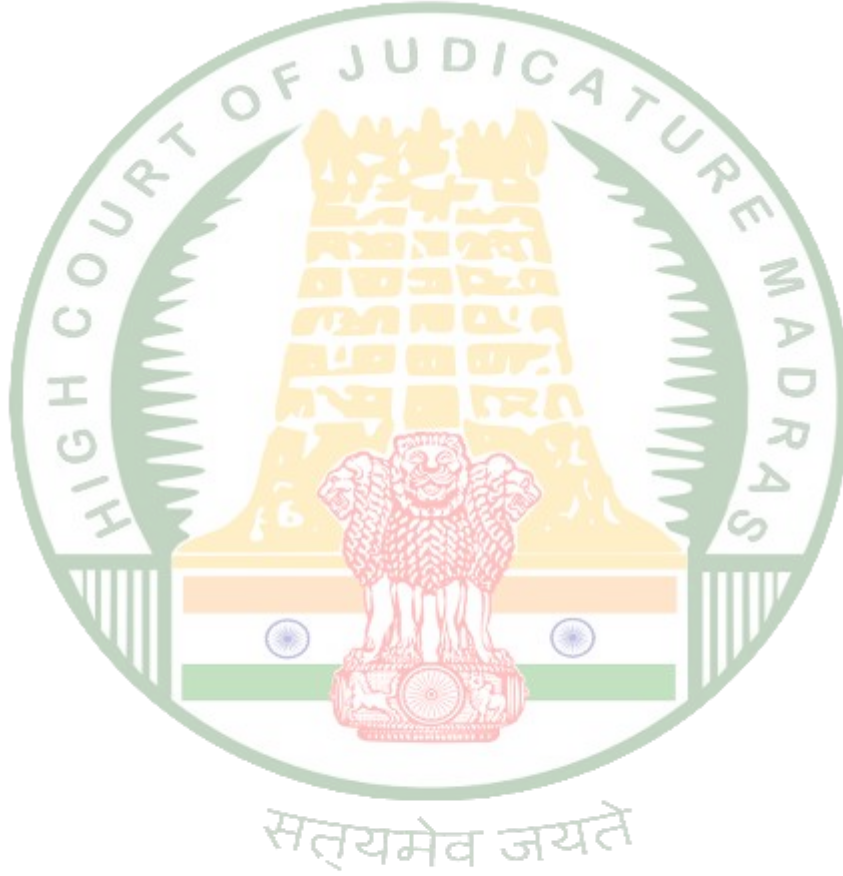


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To

1.The Commissioner for Workmen's Compensation,  
Salem – 7

2.The Section Officer,  
V.R.Section. High Court,  
Madras.



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**C.SARAVANAN, J.**

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Pre-Delivery Judgment  
in  
C.M.A.No.2689 of 2002

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