

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	27.09.2019
Pronounced On	22.10.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1518 of 2006
and C.M.P.No.6778 of 2006

New India Assurance Company Ltd.,
Motor Third Party Cell,
No.45, Moore Street,
Chennai 600 001.

.. Appellant

vs

1.R.Babu
2.S.Munian

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order of the Commissioner for Workmen Compensation-I, (Labour Assistant Commissioner-I) Chennai 600 006 dated 08.11.2005 made in WC.No.315 of 2004.

For appellant : Mr.V.Soundarajan
For R2 : No Appearance

J U D G M E N T

The appellant is aggrieved by the impugned order dated 08.11.2005 passed in W.C.No.315 of 2004 by the Commissioner for Workmen's Compensation - I, (Labour Assistant Commissioner - I), Chennai 600 006.

2. By the impugned order, the Commissioner for Workmen's Compensation - I, has awarded a sum of Rs.2,64,326/- to the 1st respondent. The case of the appellant is that on 02.03.2004 while crossing the road the 1st respondent was hit by the motorcycle bearing registration No.TN.09Y 5996.

3. Before the Commissioner for Workmen's Compensation - I, (Labour Assistant Commissioner-I), Chennai 600 006, the 2nd respondent disputed the status of the 1st respondent as a cleaner of the lorry insured with the appellant.

4. It is submitted that merely because the lorry in question was insured with the appellant by itself will not be sufficient to fasten liability on the appellant.

5. It is submitted that even if the 1st respondent suffered an employment injury, the liability cannot be fastened on the appellant- Insurance Company merely because lorry bearing registration No.TMO 4255 was insured with the appellant.

6. The Commissioner for Workmen's Compensation - I has noted that the evidence of owners/drivers of the vehicle, but at the same time has relied upon the FIR filed as Exp.1 to come to the conclusion that the 1st respondent was employed by the 2nd respondent and therefore the appellant was liable to be paid the compensation as the vehicle namely lorry in question bearing reference No.TMO 4255 which was insured with the appellant.

7. In the appeal before this Court, the learned counsel for the appellant submits that there is neither direct nor the indirect/circumstantial evidences to show that the 1st respondent/claimant was an employee of the 2nd respondent - owner of the lorry bearing reference No.TMO 4255.

8. Further, it is submitted that the FIR was filed 21 hours after the alleged accident and was filed with a view to wrongly fasten liability after realising that the motorcycle which hit the 1st respondent and was involved in the accident was not insured and therefore a false case has been made out as if the 1st respondent was employed with the 2nd respondent.

9. The learned counsel for the appellant further submitted that the FIR by itself will not be sufficient to fasten the liability to infer that the 1st respondent was employed by the 2nd respondent, particularly, in the light of the fact that the 1st respondent not only denied that the 1st respondent was an employee but also the vehicle insured with the appellant was not involved in any accident.

10. Though notice has been served on the first respondent/claimant, there is no representation on behalf of the 1st respondent. Notice on the second respondent has not been served.

11. I do not see any point in adjourning the case at this distance point of time in 2019 after a lapse of fixed 13 years since the filing of the present appeal. Therefore, the learned counsel for the appellant was asked to address his arguments on behalf of the appellant insurance company.

12. On 14.12.2006, the present appeal was admitted with the observation :-

"Notice of motion is ordered only on the question of compensation awarded on the disability certificate certifying 65% disability. I do not find any reason to admit the appeal. The appellant is directed to serve notice to the respondents only for the limited purpose of ascertaining the nature of disability and the compensation payable".

13. I have considered the arguments advanced by the learned counsel for the appellant insurance company. The appellant has disputed that the first respondent was not employed as a cleaner of the lorry owned by the second respondent which was insured with it.

14. The Commissioner for Workmen's Compensation has concluded that the first respondent was employed with the second respondent owner of the lorry. Barring denial by the second respondent owner of the lorry, there are no other evidence to substantiate the above stand. Therefore, it has to be necessarily affirmed that the first respondent was indeed employed by the second respondent owner of the lorry.

15. The appellant has not made any submission regarding the nature of disability of the first respondent to interfere with the compensation awarded in the impugned order passed by the Commissioner for Workmen's Compensation. Therefore, I am unable to consider the arguments of the learned counsel for the appellant on the issue relating to the liability.

16. Therefore, I am of the view that the present appeal filed by the appellant is liable to be dismissed. The appellant shall pay the award amount together with interest at the rate of 12% p.a. from the date of petition till the date of realisation to the first respondent/claimant. Liberty is given to the appellant to recover the amount from the second respondent-owner of the lorry with whom the vehicle was insured.

17. The civil miscellaneous appeal stands dismissed with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VIII)

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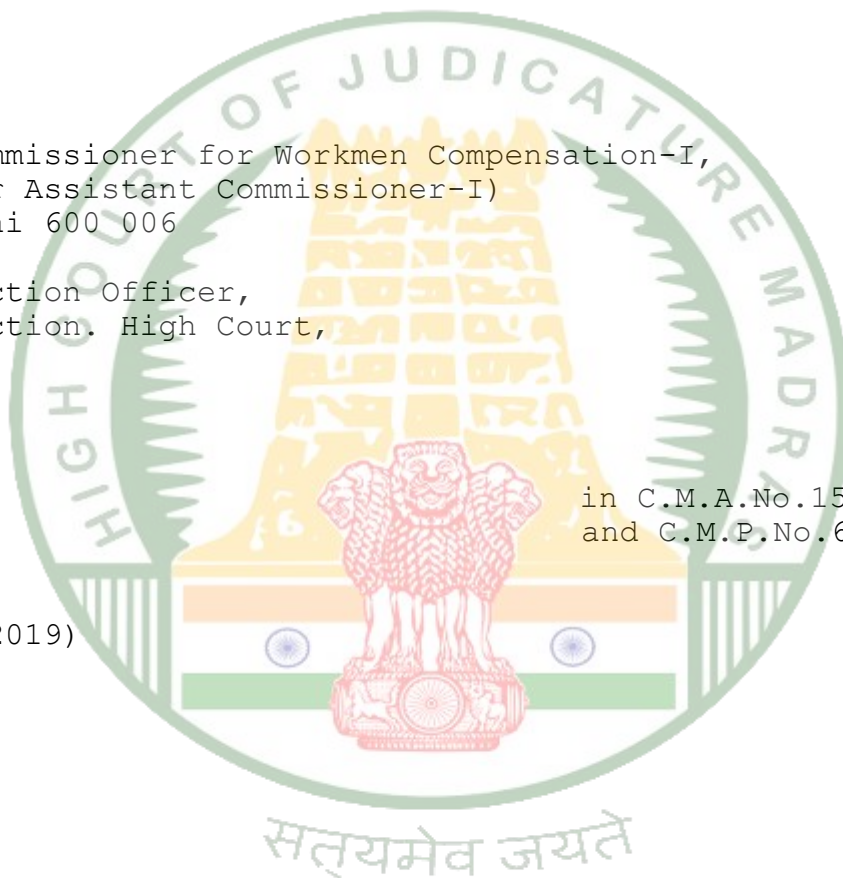
Sub-Assistant Registrar

jen/kkd
To

1. The Commissioner for Workmen Compensation-I,
(Labour Assistant Commissioner-I)
Chennai 600 006
2. The Section Officer,
V.R.Section. High Court,
Madras.

SPD(CO)
SP(17/12/2019)

in C.M.A.No.1518 of 2006
and C.M.P.No.6778 of 2006



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