

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2565 of 2005

and

C.M.P.No.13434 of 2005

United India Insurance Co.Ltd.,
Chennai ...Appellant/2nd Respondent

vs

1.High Court Raja,
rep. by his father Selladurai : 1st Respondent/Petitioner

2.Usha John : 2nd Respondent/ 1st Respondent

Prayer: Civil Miscellaneous Appeals filed under Section 30(1) of Workmen's Compensation Act, 1923, against the award and decree dated 29.03.2005 made in W.C.No.345 of 2004 on the file of the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour - I, Chennai.

For Appellant : Mr.S.Arun Kumar

For R1 : Not ready in notice

For R2 : No appearance

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned order dated 29.03.2005 passed by the Deputy Commissioner of Labour - I, Chennai in W.C.No.345 of 2004.

2.By the impugned order, Deputy Commissioner of Labour - I, Chennai has awarded a sum of Rs.1,35,828/- as compensation to the 1st respondent/claimant represented by his father Selladurai.

3.The claimant / 1st respondent then a minor while working as a load man for the 2nd respondent met with an accident while unloading eggs from the goods van bearing registration No. TN 21 S 119 at G.N.T.Road, Mamandur, Opp. Petrol Bunk on 25.11.2003 at about 10.30 hrs . It was stated that the 1st respondent was a minor about aged 17 years at the time of accident.

4.The claim was resisted by the appellant Insurance Company on the ground that the claimant High Court Raja was a minor and therefore, there was violation of condition of the policy. Therefore, the compensation cannot be fastened on the appellant Insurance Company merely because the vehicle was insured with the appellant Insurance Company.

5.The Deputy Commissioner of Labour - I, Chennai allowed the claim petition by awarding the aforesaid amount to the 1st respondent/claimant.

6.Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed.

7.The learned counsel for the appellant submits that the Deputy Commissioner of Labour - I, Chennai erred in holding that the appellant was liable to pay the compensation though the 1st respondent did not fall and was not a worker within the meaning of the Workmen's Compensation Act, 1923 as he was a minor.

8.That apart, it is stated that the accident was caused by the another vehicle and not by the said insured vehicle which was insured with the appellant Insurance Company and therefore the appellant cannot be fastened with liability to pay compensation.

9.In the present appeal, the appellant Insurance Company has raised the following substantial questions of law for consideration:

- i. Whether the Deputy Commissioner Labour was right entertaining the claim contrary to the definition of Workmen U/S. 2(n) and Minor defined U/S.2(ff)?
- ii. Whether the Deputy Commissioner Labour was correct in holding the Appellant to pay the

compensation inspite of the fact that as per S.147 of M.V.Act the vehicle was not under use or cause for the alleged accident?

iii. Whether the Deputy Commissioner Labour erred in coming to the conclusion that the first respondent had sustained loss of earning power contrary to the provisions of S.4(1)(C)(ii) of the W.C. Act?

iv. Whether the Deputy Commissioner Labour erred in not obtaining the assistance by invoking the provision S.20(3) of the W.C. Act to assess the loss of earning power?

10. The main thrust of the arguments advanced by the learned counsel for the appellant is that the 1st respondent was a minor at the time of accident and therefore he cannot be considered as a workmen within the meaning of the Workmen's Compensation Act, 1923. Therefore, no compensation can be awarded under the provision of the said Act. It is further submitted that the 1st respondent minor was hit by another vehicle and therefore question of the appellant being fastened with liability merely because the 1st respondent was employed with the 2nd respondent does not arise.

11. I have perused the order of the Deputy Commissioner of Labour - I, Chennai and the records.

12. I do not find any merits in this appeal. The 1st respondent was employed with the 2nd respondent as a cleaner for the said vehicle owned by the 2nd respondent. The 1st respondent met with an accident while unloading eggs from the insured vehicle and sustained injuries. The Deputy Commissioner of Labour - I has confirmed the age of the 1st respondent based on the Ex.P 3 Discharge Summary of the 1st respondent given by the Government Hospital, Chengalpattu stating that the 1st respondent was aged 18 years at the time of accident.

13. Therefore, I do not find any merits to interfere the order of the Deputy Commissioner of Labour -I. Therefore, the present Civil Miscellaneous Appeal is liable to be dismissed.

14. Accordingly, the present Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

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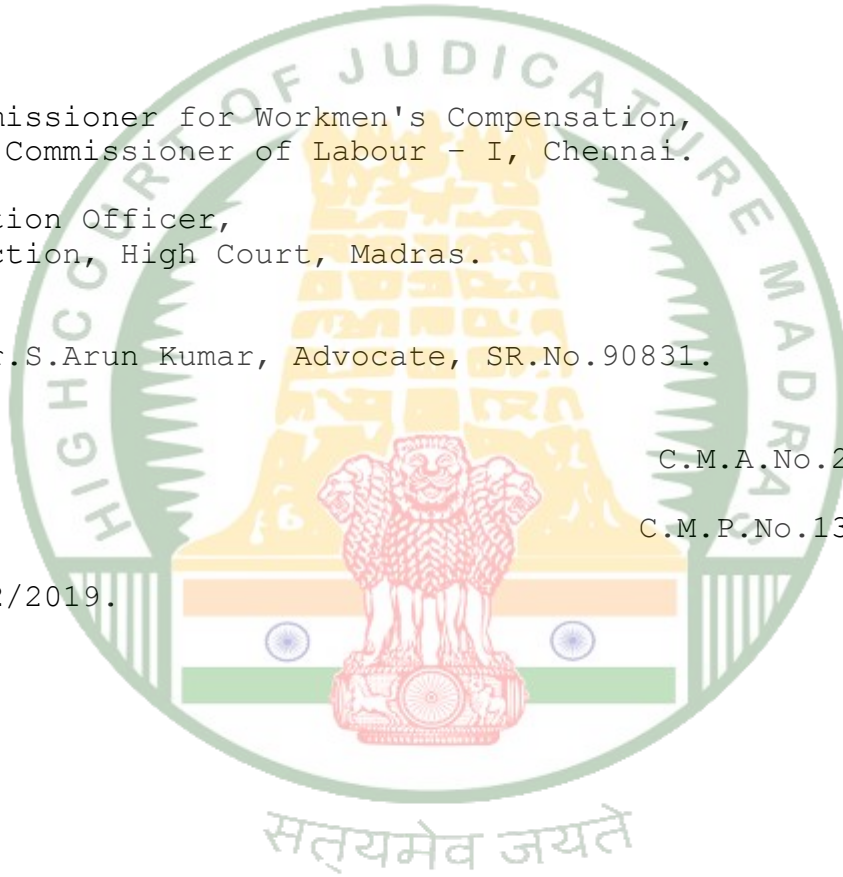
1. The Commissioner for Workmen's Compensation,
Deputy Commissioner of Labour - I, Chennai.

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

+1CC to Mr. S. Arun Kumar, Advocate, SR.No.90831.

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MR(CO)
CSR: 13/12/2019.



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