

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019
CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2818 of 2007
and
M.P.No.2 of 2007

United India Insurance Company Ltd.,
38, Anna Salai, Chennai - 2. ... Appellant

vs

1.D.Ashok Kumar

2.D.Ganesh ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order made in W.C.O.P.No.31 of 2006, on the file of the Workmen Compensation Commissioner-1 Court/Labour Assistant Commissioner - 1, Chennai, dated 02.04.2007.

For Appellant : M/s.Dhanalakshmi for
M/s.N.Mala

For R1 & R2 : No appearance

सत्यमेव जयते
J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned award dated 02.04.2006 passed by the Deputy Commissioner of Labour - 1, Chennai in W.C.No.31 of 2006.

2.By the impugned award, the Deputy Commissioner of Labour has awarded a sum of Rs.2,49,996/- as compensation to the 1st respondent/claimant.

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

4.In the present Civil Miscellaneous Appeal, the appellant Insurance Company has raised the following substantial questions of law for consideration:-

- i. Whether the learned Workmen's Commissioner erred in his appreciation of Sec.4(1)(c)(ii) of the Workmen's Compensation Act, 1923?
- ii. Whether the learned Workmen's Compensation Commissioner failed to note that in case of non-schedule injury, the loss of earning capacity is not co-extensive with loss of physical capacity and that the medical evidence can only be a guiding factor, and not a reflection of the loss of earning capacity?
- iii. Whether the learned Workmen's Compensation Commissioner failed to note that the purpose of the Workmen's Compensation Act is the assessment of Compensation for loss of earning capacity arising out of the disability and not the loss or diminution to physical frame of the injury?
- iv. Whether the learned Workmen's Compensation Commissioner failed to note that the Workmen's own negligence resulted in the accident and hence the appellant could not be mulcted with liability?

6. Heard the learned counsel for the appellant. There is no representation for the respondents.

7. It is the contention of the learned counsel for the appellant Insurance Company that the accident was on account of rash and negligent driving of the vehicle by the 1st respondent/claimant. Therefore, the compensation cannot be fastened on the appellant Insurance Company.

8. I have perused order of the Deputy Commissioner of Labour - I and considered the arguments advanced by the learned counsel for the appellant.

9. The main thrust of the arguments of the learned counsel for the appellant is to dislodge the finding of fact based on which the relief has been granted. As finding of facts arrived by the Deputy Commissioner of Labour - 1 cannot be disturbed in the appeal, the appeal is devoid of any merits.

10. The order passed by the Deputy Commissioner of Labour - 1 is based on the preponderance of probability as to whether the injury was an employment injury or not under Section 3 of the Workmen's Compensation Act, 1923. Exception provided are under the proviso of Section 3(1)(a) of the Workmen's Compensation Act, is not attracted.

11. The appellant has not made out the case to bring out the case within the purview of exception provided under the proviso of Section 3 of the Workmen's Compensation Act, 1923

as it stood. I do not find any reasons to interfere with the order of the Deputy Commissioner of Labour - 1. The order of the Deputy Commissioner of Labour- I is well reasoned and requires no interference.

12.In view of the above, the present Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

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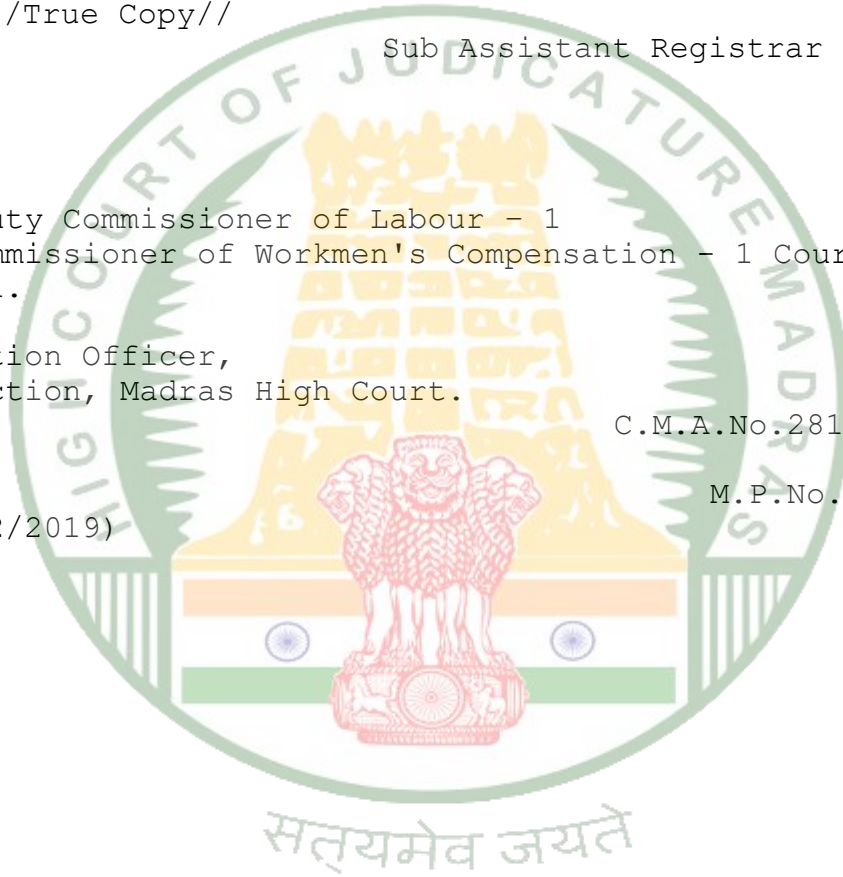
Sub Assistant Registrar

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To

- 1.The Deputy Commissioner of Labour - 1
The Commissioner of Workmen's Compensation - 1 Court,
Chennai.
- 2.The Section Officer,
V.R.Section, Madras High Court.

C.M.A.No.2818 of 2007
and
M.P.No.2 of 2007

A.SK (27/12/2019)



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