

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

CMA.No.3613 of 2010

Veerapan

...Appellant

.Vs.

1.Kumaran

2.United India Insurance Co. Ltd.,
A5 & 6, 2nd Floor, Appasamy Towers,
27, Sir Tyagaraya Road, T.Nagar,
Chennai 600 017.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30(1) (a) of Workmen Compensation Act, 1923 to award compensation of Rs.5,00,000/- with interest as claimed by the appellant in W.C.400 of 2007 dated 12/7/10 on the file of Commissioner for Workmen Compensation (Deputy Commissioner for Labour-I Chennai-6.

For Appellant : Mr.N.A. Nissar Ahmed

For Respondent-2: No Appearance

R1: No Appearance

JUDGMENT

The appellant is aggrieved by the impugned award dated 12.07.2010 passed by the Deputy Commissioner for Labour, Chennai-6 in W.C.No.400 of 2007.

2.In the said impugned order, the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Chennai-6 has dismissed W.C.No.400 of 2007 filed by the appellant/claimant.

3.The appellant had earlier filed a claim petition before the Deputy Commissioner of Labour against 1st and 2nd respondent in W.C.No.400 of 2007. The appellant is the driver of the alleged vehicle involved in the accident. The first respondent is the owner of the vehicle and the 2nd respondent is the Insurer of the vehicle.

4.The Deputy Commissioner of Labour has rejected the claim petition filed the appellant on the ground that the appellant was paying a sum of Rs.300/- per day to the first respondent and there was no employer-employee relation ship between the appellant and the first respondent.

5.It is seen from records that in para No:3 of the counter filed by the first respondent before the Deputy Commissioner of Labour, he has admitted that he was the owner of the accident auto which was involved in the accident and the appellant was his employee and he was paying a sum of Rs.5,000/- per month as salary to the appellant, pursuant to which the appellant herein filed the claim petition, before the Deputy Commissioner of Labour.

6. When the case was listed on 28.11.2019, there was no representation for the second respondent/Insurance Company and at the request of the learned counsel for the appellant, it was adjourned to 29.11.2019 and even today also there is no representation on behalf of the Insurance Company.

7.The present Civil Miscellaneous Appeal was admitted after raising the following substantial question of law:-

a.Whether the learned Commissioner is right in holding that the appellant is not a workman as defined under Sec.2(n) and Sec.12. Of the Act.

b. Whether the learned commissioner erred in not properly holding that the appellant is not a workman as defined under Sec.2(n) and Sec.12 of the Act.

8. The Deputy Commissioner of Labour is not governed by the rules of evidence. Conclusion and findings are rendered on preponderance of probabilities. Merely because the appellant was paying Rs.300/- per day out of the daily earning to the owner of the vehicle namely the first respondent, did not mean that the appellant was not an employee and there was no employee-employer relationship between them. Therefore, the conclusion of the Deputy Commissioner of Labour, that there is no employee-employer relationship is not correct.

9.At the same time the claimant has substantiated his claim that he is earning Rs.5,000/- per month without any evidence and he sought compensation for Rs.5,00,000/- for the injuries suffered by him is a exaggerative one. In case the appellant is not able to produce any documents to substantiate the claim, the Deputy Commissioner of Labour is entitled to award compensation based on the minimum wages as per the applicable of Government Orders in force at the relevant point of time.

10. Therefore, I am of the view that the order passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Chennai-6 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), Chennai-6.

11. The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Chennai-6, is directed to determine the quantum of compensation to be paid to the appellant and The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Chennai-6 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 in accordance with law.

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

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

The Commissioner for Workmen Compensation
(Deputy Commissioner for Labour-I) Chennai-6.

+1cc to Mr.N.A.Nissar Ahmed, Advocate SR.99884

CMA.No.3613 of 2010

VD(CO)
CB(06/01/2020)

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