IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NOS.1949 AND 2794 OF 2011

CMA NO.1949 / 2011

K.Shanmugam ... Appellant/Petitioner

Vs.

1.E.Mani
Senthil Murugan Lorry Service
7, North Wall Road,
Chennai - 600 079.

2.Oriental Insurance Co. Ltd.
Esplanade, Chennai - 600 108. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the W.C.Act against the order dated 14.10.2010 passed in W.C.No.331 of 2007 by the Commissioner for Workmen's Compensation - II, Chennai - 600 006, and the same has been received by the appellant on 12.04.2011 and praying to set aside the same.

For Appellant : Mr.A.Shanmugaraj

For Respondent-2 : Mr.R.Sivakumar

CMA NO.2794 / 2011

Oriental Insurance Co. Ltd.
Esplanade
Chennai - 600 108. ... Appellant/2nd Respondent

Vs.

1.K.Shanmugam ... 1st Respondent/Petitioner

2.E.Mani
Senthil Murugan Lorry Service
7, North Wall Road,
Chennai - 600 079. ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 14.10.2010 (received by the appellant on 12.04.2011) passed in W.C.No.331 of 2007 by the Commissioner for Workmen's Compensation – II, Deputy Commissioner of Labour-2, Teynamept Chennai - 600 006.

For Appellant : Mr.R.Sivakumar

For Respondent-1 : Mr.A.Shanmugaraj

COMMON JUDGMENT

Aggrieved over the order dated 14.10.2010 passed by the Authority under the Workmen's Compensation Act, the Commissioner for Workmen's Compensation - II, Chennai, in W.C.No.331 of 2007, the claimant as well as the insurance company have preferred the above appeals.

2. According to the claimant, while he was working as Helper in the respondent's Crane for removing the Pippes with the support of the Crane the Crane rope cut-off and consequently, the pipes fell over the abdomen of the claimant and thereby caused grievous injuries. Due to the grievous injuries sustained by him, he was not in a position to get any employment or work anywhere, but to live with the consequences of the grievous injuries. In order to prove his claim, the claimant examined himself as P.W.1, two Doctors as P.W.2 and P.W.3 and marked Exs.A1 to A10. On the side of the respondents, the Officer of the insurance company was examined as R.W.1 and marked Exs.R1 and R2.

3. The case of the insurance company is that there is no such accident had taken place. The claimant has failed to produce any police complaint or any evidence to show that there existed employer employee relationship between the respondent/owner of the Crane and the claimant. In the absence of any proof, with regard to the accident, the claim petition ought to have been dismissed. Secondly, the insurance policy does not cover Cleaner or Helper of the Crane and therefore, the insurance company is not liable to pay any compensation. Thirdly, in any event, the assumption of loss of earning power at 70% by the authority is far excessive and therefore, the order passed by the Authority is liable to be dismissed.

4. Heard the submissions made on either side and perused the materials available on record.

5. In so far as the accident is concerned, the records goes to show that there was an intimation given to the Police on 27.03.2006. It was duly signed by the Sub-Inspector of Police.

Secondly, the said accident is substantiated from the cross examination of R.W.1, the Officer of the insurance company. R.W.1 would depose that the claimant was working as a Cleaner as per the investigation report and that he did not travel in the Crane, but the Crane rope got cut and fell on the claimant. This incident was clearly explained to the Investigation Officer. However, the said witness has not marked the investigation report. In that event, it has to be construed that the insurance company admits the incident and the claimant suffered injury out of the same. The evidence further goes to show that usually in a Crane only Helper is allowed, but for Lorry, coverage will extend up to 5 persons. In the instant case, insurance policy is marked as Ex.A7.

6. On a perusal of the insurance policy, it is seen that it covers the employee / Driver under the heading "liability". In the schedule of premium, it is shown that a sum of Rs.25/- is paid towards the coverage of insurance to the employees / Drivers. During cross examination of the Official of the insurance company admitted that a sum of Rs.25/- was paid for covering the employee / Driver. In that event, the insurance policy would cover the employee also. The Authority under Workmen's Compensation Act, after considering the documentary as well as oral evidence, has rightly come to a conclusion that the accident had happened within the period covered under the policy and that the claimant suffered grievous injuries due to the falling of pipes on him. The policy issued by the insurance company covers the incident.

7. Secondly, the issue which has to be considered is that whether the claimant was an employee under the respondent / owner of the Crane or not. Even though the respondent/employer filed a detailed counter affidavit denying the employment, he has not proved the same by letting in evidence before the Authority. Therefore, in the absence of any contra evidence, it has to be construed that the claimant was an employee under the respondent /employer and he has proved the same by his evidence. Ex.R2 is the legal notice issued by the claimant to the respondent / employer. Even though the legal notice was served on the respondent / employer, he has not chosen to reply the same. In such event, it has to be construed that claimant was employed under the respondent/employer and therefore, the insurance company is vicariously liable to pay compensation to the claimant.

8. It only remains to consider the quantum of compensation to be awarded to the workman. On the basis of the evidence given by the expert Doctor, the Authority has fixed the loss of earning capacity at 70%. This is challenged in both the appeals by the claimant as well as the insurance company. From the consideration of the injuries suffered by the claimant, it

is seen that he is permanently fixed with urinary bag and that it has to be cleaned once in two weeks. The Orthopaedic Surgeon would opine that because of the pelvis fracture, the claimant cannot perform any work. From the evidence, the Doctors have arrived at a conclusion that the claimant suffered 90% disability. In such circumstances, it is very clear that the person holding urinary bag and week hip, cannot perform any work. In fact, it will endanger his life. Therefore, this Court is of the view that the loss of earning capacity should be fixed at 100%. There is no dispute as to the calculation of monthly income. In that event, this Court is inclined to modify the award passed by the Authority under the Workmen's Compensation Act, as under:

Award passed by the Authority:
60/100 X 3585 X 197.06 X 70/100 = Rs.2,96,713/-
Now modified as:
60/100 X 3585 X 197.06 X 100/100 = Rs.4,23,876/-

9. The insurance company has deposited the entire amount awarded by the Authority viz., Rs.2,96,713/- along with interest. In view of the modification of compensation now arrived at today, the insurance company is directed to deposit the balance amount, with proportionate interest, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant/workman is entitled to withdraw the same, on production of proper identification.

10. In fine, the Civil Miscellaneous Appeal filed by the claimant in CMA No.1949 of 2011 is allowed and the Civil Miscellaneous Appeal filed by the insurance company in CMA No.2794 of 2011 is dismissed. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

TK

To

The Commissioner for Workmen's Compensation - II,
Chennai - 600 006.

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.21360
+1cc to Mr.R.Sivakumar, Advocate, S.R.No.20718

C.M.A.NOS.1949 AND 2794 OF 2011

KK(CO)
RRS(27/06/2019)