

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2308 of 2011

V.Immanual ... Appellant/Appellant

vs

1.T.Shridhar

2.The New India Assurance Company Limited,
No.45, Moore Street,
2nd line beach,
Chennai - 600 001. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the award dated 07.02.2011 made in W.C.No.320 of 2006 on the file of Deputy Commissioner of Labour-1, Chennai.

For Appellant : M/s.A.Subadra for
M/s.M.Malar

For R1 : Not ready in notice

For R2 : Mr.D.Nadhamani

J U D G M E N T

The appellant is aggrieved by the impugned order dated 07.02.2011 passed by the Deputy Commissioner of Labour-I, Chennai in W.C.No.320 of 2006.

2.By the impugned order, the Deputy Commissioner of Labour-I has awarded a sum of Rs.88,636/- to the appellant as compensation.

3. According to the appellant, on 14.05.2006 at about 06.30 p.m, when the appellant was driving an Auto bearing registration No. TN 01 C 5832 belonging to the 1st respondent, he met with an accident as a result of which he sustained grievous injury.

4. The appellant thereafter filed a claim petition before the Deputy Commissioner of Labour-I during the month of January, 2006 under Section 10 of the Workmen Compensation Act, 1923.

5. The claim was contested by the 2nd respondent Insurance Company on the ground that the appellant was not engaged by the 1st respondent based on the Ex.R2 letter obtained from the 1st respondent wherein the 1st respondent has stated that the appellant was not an employee of 1st respondent owner of the vehicle. Though the vehicle was insured with the appellant, the Deputy Commissioner of Labour - I has allowed the claim petition by awarding a sum of Rs.88,636/- paid by the 1st respondent. However, at the same time Deputy Commissioner of Labour - I has held that the 2nd respondent was not be liable to pay the compensation even though the vehicle was insured with the 2nd respondent.

6. The Deputy Commissioner of Labour - I has directed the 1st respondent owner of the vehicle to deposit the amount within 30 days, failing which, said respondent was liable to pay 12% interest from the date of the accident.

7. In the present Civil Miscellaneous Appeal, the appellant has raised the following substantial question of law:-

- i. Whether the Deputy Commissioner of Labour-I is right in dismissing the claim for compensation by the appellant against the second respondent when the second respondent was failed to prove the employment?
- ii. Whether the Deputy Commissioner of Labour-I is right in dismissing the claim for compensation by the appellant against the second respondent when the second respondent was failed to prove relationship between employer and employee?
- iii. Whether the Deputy Commissioner of Labour-I is right in dismissing the claim for compensation by the appellant against the second respondent when the second respondent was failed to prove accident in the course of employment?
- iv. Whether the Deputy Commissioner of Labour-I is right in awarding against the first respondent even

the employer not came in witness box and not appeared before Commissioner?

8.I have perused the order of the Deputy Commissioner of Labour-I. It is noticed that there is contradiction in the order passed by the Deputy Commissioner of Labour-I. The 1st respondent had remained absent and was therefore set exparte before the Deputy Commissioner of Labour - I. On one hand the compensation has been awarded yet at the same time, the 2nd respondent has been absolved of its liability under the Insurance Policy though the vehicle was insured with the 2nd respondent, in the light of Ex.R2 letter of the 1st respondent that the appellant was not his employee.

9. There is contradiction in this case, in as much as the Deputy Commissioner of Labour - I on one hand relied on the Ex.R2 letter of the 1st respondent to conclude that the appellant was not a driver of the 1st respondent but at the same time has awarded the compensation to the appellant since the 1st respondent remained exparte before him.

10.If compensation is payable, the 2nd respondent Insurance Company is liable to pay compensation together with interest from the date of the accident as per following decisions:-

- i. Pratap Narain Singh Deo vs Srinivas Sabata and Another, (1976) 1 SCC 289.
- ii. Jaya Biswal and Others vs Branch Manager, IFFCO Tokio General Insurance Co. Ltd., 2016 (1) TN MAC 289 (SC).
- iii. N.Ganesan vs Thilagavathi and Others, 2010 (2) TN MAC 80 (DB).
- iv. R.Prakasam vs M/s. A to Z Cargo Carieer and Another, passed by this Court in C.M.A.No.2558 of 2015.

11.I find some reasons to interfere in this case. Accordingly, the impugned order is modified by directing the 2nd respondent to pay the compensation amount awarded by the Deputy Commissioner of Labour - I. *** together with interest at the rate of 12.5% per annum from the date of accident.** While giving the relief to the appellant, liberty is also given to the 2nd respondent Insurance Company to recover the amount from the 1st respondent in accordance with law.

12.The present Civil Miscellaneous Appeal stands allowed. No cost.

Sd/-

Assistant Registrar(CS III)

***Modified as per order of this Court
made in CMA No.2308/2011 dt.24.01.2020.**

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jen

To

1.The Deputy Commissioner of Labour-1,
Chennai.

***To be modified to
the order already
despatched on
21.01.2020**

2.The New India Assurance Company Limited,
No.45, Moore Street,
2nd line beach,
Chennai - 600 001.

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

+1cc to M/s.M.Malar, Advocate sr.89711

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C.M.A.No.2308 of 2011

mr(co)

nr 12/12/2019

CB(18/02/2020)

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