

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2023 of 2016
& C.M.P.No.14651 of 2016

The Manager,
Reliance General Insurance Co. Ltd.,
TP Claims - Legal Department,
"Reliance House", 6th Floor,
No.6, Haddows Road, Nungambakkam,
Chennai-600 006. ..Appellant/2nd Respondent

vs

1.Saravanakumar .. 1st Respondent/Petitioner
2.Mohan .. Respondents/1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act 1923 against the award and decree dated 29.06.2015 made in E.C. No.120 of 2014 on the file of the Commissioner, Workmen's Compensation Tribunal, DCL, Salem.

For Appellant : Mr.S.Arun Kumar

For respondents : Mr.A.R.Suresh for R1
No appearance for R2

JUDGMENT

The appeal has been filed against the judgment and decree dated 29.06.2015 made in E.C. No.120 of 2014 on the file of the Commissioner, Workmen's Compensation Tribunal, DCL, Salem.

2.Assailing the impugned award, learned counsel appearing for the appellant would submit that it is an admitted case that the injured claimant, who is the driver of the second respondent, while driving the two wheeler bearing Registration No.TN 28 C 2125, owned by the second respondent, who is also the owner of the four wheeler bearing Registration No.TN 28 AE 0034, to pick up his employer, met with an accident. In all fairness, he should have made a claim of compensation only against the insurer of the two wheeler, but he has wrongly made his claim

petition only against the insurer of the four wheeler. Secondly, when there was no contract between the appellant/Insurance Company and the owner of the four wheeler, the Deputy Commissioner overlooking the legal aspects, has unnecessarily and erroneously allowed the claim petition. As claimed by the claimant, his employer also let him in lurch because he has not chosen to support his claim by appearing before the Deputy Commissioner of Labour. Thirdly, there was an F.I.R. registered against the claimant holding him guilty of rash and negligent driving, but all these grounds have been completely ignored by the learned Deputy Commissioner. Therefore, when there is no contract between the appellant and the owner of the four wheeler, the plea made by the claimant that he met with an accident during the course of employment, namely, while he was going to pick up the owner of the four wheeler, is unacceptable. Therefore, the impugned award is liable to be set aside.

3.Learned counsel appearing for the claimant/first respondent, in reply, submitted that it is an admitted case that the claimant sustained grievous injuries in his head, while driving the two wheeler bearing Registration No.TN 28 C 2125 on the date of accident, namely, 07.06.2012. It is also an admitted fact that as per registration of F.I.R. marked as Ex.P1 before the Commissioner under the Workmen's Compensation Tribunal, there was a denial of compensation. Learned counsel further argued that the claimant injured, who was driving the two wheeler, which belongs to the employer, who was also owning the four wheeler, has made a claim only against his employer. Therefore, the learned Commissioner has allowed the claim petition and directed the Insurance Company to pay a sum of Rs.4,01,057/- towards compensation.

4.But this Court is unable to find any justification or merit in the impugned award. Firstly, when it is the claim of the insurer that while the claimant was driving the two wheeler bearing Registration No.TN 28 C 2125 to pick up his employer, who is also the owner of both the two wheeler and four wheeler, met with an accident, no piece of evidence or iota of evidence produced before the Commissioner to establish the relationship of employer and employee. Secondly, when the claimant has laid his claim petition that he has sustained injuries during the course of employment, while he was driving the two wheeler to pick up his employer, it is not open to him to claim compensation against the insurance company as he should have laid his claim only against the insurer of the two wheeler. Therefore, finding fundamental mistake, while passing the impugned award, this Court is unable to entertain the claim petition filed by the claimant first respondent. Accordingly, the appeal stands allowed granting liberty to the first respondent to approach the appropriate forum seeking his remedy

and the impugned award is hereby set aside. No costs.
Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

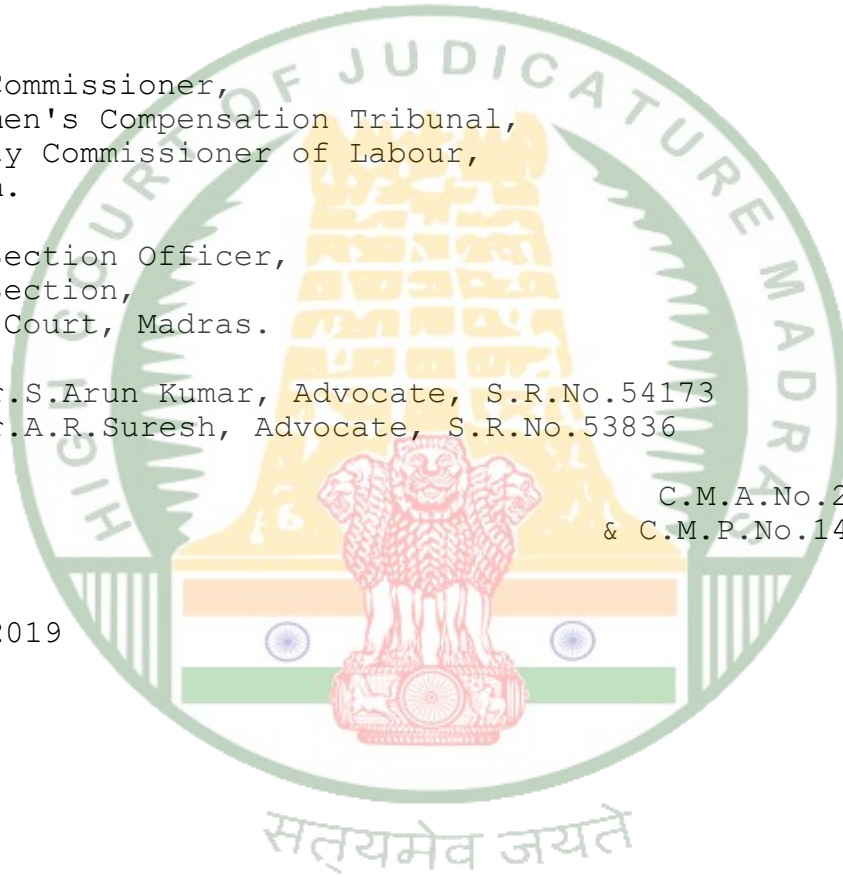
1. The Commissioner,
Workmen's Compensation Tribunal,
Deputy Commissioner of Labour,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.54173

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.53836

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