

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
Civil Miscellaneous Appeal No.2278 of 2007
and M.P.No.1 of 2007

M/s.United India Insurance Co. Ltd.,
No.38, Anna Salai, Chennai-2. ... Appellant/Opp.Party-II

-vs-

1.Mr.Govindaraj @ Raj ... 1st Respondent / Petitioner
2.Mr.Sriram ... 2nd Respondent /
Opp.Party-I

PRAYER: Appeal is filed under Section 30 of Workmen Compensation Act, 1923 to set aside the order dated 20.03.2007 made in W.C.No.163 of 2006 on the file of the Commissioner for Workmen Compensation-II (Deputy Commissioner of Labour-II) Chennai-600 006 and be pleased to dismiss the said claim application and thus render justice.

For Appellant : Mr.M.J.Vijayaraghavan

For Respondents: No Appearance

J U D G M E N T

This Appeal has been filed to set aside the order of the Deputy Commissioner of Labour-II, Chennai dated 20.03.2007 made in W.C.No.163 of 2006, directing the appellant herein to deposit a sum of Rs.1,43,568/- within 30 days in the name of the Deputy Commissioner of Labour-II, Chennai, failing which, the amount is payable with interest @ 12% from the date of accident till the date of deposit.

Facts in brief:

2. The claimant / 1st respondent herein was employed by the 2nd respondent herein as an Auto Driver to drive his Auto bearing Regn.No.TN-22-AH-6107 and the claimant was paid a salary of Rs.300/- per day. On 28.03.2006 at about 19.00, the claimant had

met with an accident at E.C.R.Road and sustained severe injuries and he was immediately taken to Chengalpet Government Hospital for treatment and thereafter, shifted to Government Hospital, Chennai. A case in Crime No.179 of 2006 had also been registered by the G-6, Seyyur Police Station. Since the said Auto was insured with the appellant herein, the claimant had filed a petition before the Authority under the Workmen Compensation Act, 1923, Chennai seeking for compensation from the appellant and the 2nd respondent.

3. The Authority, on appreciation of oral and documentary evidence, had directed the appellant to pay the amount as stated supra and there was none represented on behalf of the 2nd respondent and therefore, he was set exparte. Aggrieved by the said order, the appellant / insurance company is before this Court.

4. Learned counsel for the Appellant / Insurance Company has submitted that the fact of employer and employee relationship has not been proved through any documentary evidence in this case and therefore, the order of the Commissioner is not in consonance with the provisions of W.C.Act, 1923. It is further submitted that when the fractures suffered by the claimant are non-schedule injuries, the claimant must have been referred to a Medical Board for ascertaining the percentage of loss of earning capacity. Moreover, A.W.2, who was examined as one of the witnesses, had neither issued any disability certificate nor treated the claimant and as such, the compensation granted by the Authority, Chennai has no legs to stand and the order of the Deputy Commissioner of Labour-II, Chennai is liable to be set aside by this Court.

5. Heard the learned counsel for the appellant and there is no representation for the respondents, even though their names are printed in the cause list.

6. The main plea taken by the appellant is that the existence of relationship of employer and employee at the time of accident was not duly established and that the injury is not covered by the items of schedule-I of W.C.Act. It was also pleaded that the authority should have exercised the power under Section 20(3) of the Act, by referring the employee for examination before the Medical Board and thereafter, should have rendered a finding.

7. It is not in dispute that there was an accident on 28.03.2006 and at that time, the claimant was driving the Auto belonging to the 2nd respondent herein and sustained injuries. The claimant duly proved that the Auto was insured with the

appellant and the policy was also in existence at the time of accident. The submission made by the appellant that there was a rash and negligent driving on the part of the claimant is totally incorrect and taking note of the injury suffered by the claimant, the Authority had rightly granted the compensation, which cannot be faulted with.

8. The next contention of the appellant is that the Doctor, who was examined as A.W.2 had neither actually given the disability certificate nor treated the claimant. The findings arrived at by the Authority to that effect in respect of the said issue are all finding of fact, which cannot be casually interfered with by this Court. The authority had fixed the monthly income of the claimant as Rs.4000/-, based on which, had rightly arrived at the compensation. The contention that the production of license of the claimant as Ex.P7 itself is a proof that the claimant was not in employment, has no substance in view of the fact that the license was referred to by the authority only for the purpose of determination of the date of birth of the claimant and not for any other purpose and it is mandatory on behalf of the insurance company to establish that the claimant was gainfully employed, which is absent in this case.

9. Finding no merits in the contention raised by the learned counsel for the Appellant, the Civil Miscellaneous Appeal is dismissed and the order of the Deputy Commissioner of Labour-II, Chennai dated 20.03.2007 made in W.C.No.163 of 2006 is hereby upheld. The amount deposited by the Insurance Company shall be released, if not already released, to the Claimant / 1st respondent herein together with accrued interest within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

सत्यमेव जयते Assistant Registrar

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Sub-Assistant Registrar

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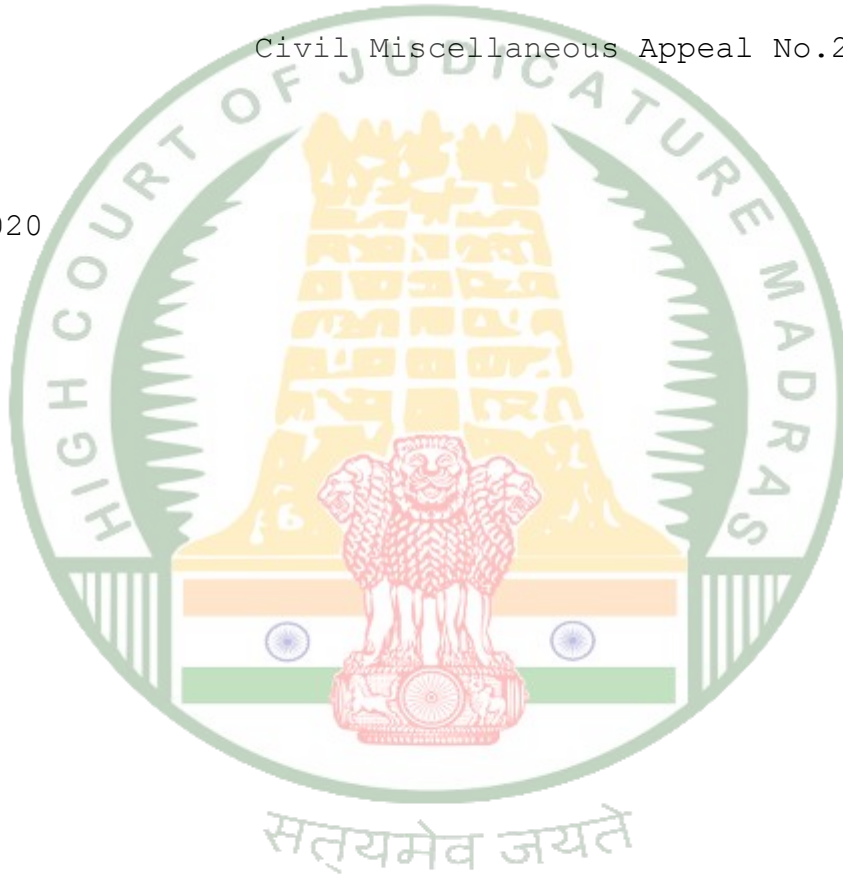
The Deputy Commissioner of Labour-II,
Chennai.

2.The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.M.J.Vijayaraghavan Advocate sr15755

Civil Miscellaneous Appeal No.2278 of 2007

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