

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.804 of 2010
and C.M.P.No.1 of 2010

M/s.The New India Assurance Co. Ltd.,
Annur, Coimbatore District. ... Appellant / II Opp.Party

-vs-

1.Thiru.Elangovan ... I Respondent / Applicant
2.Thiru.Anandan ... II Respondent / I Opp.Party

PRAYER: Appeal is filed under Section 30 of Workmen's Compensation Act, 1923 to set aside the Award dated 30.11.2009, passed by the commissioner for workmen's compensation (Deputy Commissioner of Labour, Salem) in W.C.No.126 of 2006 received on 29/12/2006 and be pleased to dismiss the above claim petition.

For Appellant : Mr.J.Michael Visuvasam

For R1 : Mr.K.V.Shanmuganathan

J U D G M E N T

This Appeal has been filed to set aside the order of the Deputy Commissioner of Labour, Salem dated 30.11.2009 in W.C.No.126 of 2006, directing the appellant to pay a sum of Rs.1,67,141/- within 30 days, failing which the said amount is liable to be paid with interest @ 12% p.a.

2. It is the case of the Appellant that the applicant / 1st respondent herein by name Elangovan, who was the owner-cum-driver of the Car bearing Regn.No.TDC 5688 and had met with an accident on 08.04.2003, was not employed under the 2nd Respondent and taking advantage of the non-transfer of the ownership of the vehicle, had falsely filed a claim petition before the Authority, seeking compensation. It is the further case of the appellant that the Authority, without appreciating the corrects facts, had mechanically granted a compensation of Rs.1,67,141/-,

by taking note of the age of the applicant as 45 years and the monthly salary as Rs.40,000/- and the same is liable to be set aside.

3.Learned counsel for the Applicant / 1st Respondent herein has submitted that the claim cannot be said to be bad, merely because the vehicle in question has been sold to another person and the authority has rightly rendered a finding in favour of the applicant, by taking all the relevant factors into consideration, which does not warrant any interference by this Court. In support of his submission, he has also relied upon a decision of this Court in the case of Royal Sundaram Alliance Insurance Co., Ltd., Chennai vs. Anand and another [C.M.A.(MD) No.1108 of 2014] decided on 25.08.2015, wherein it has been held as follows:

"10.In this case, Mohammed Mustafa perhaps not wriggled out of the situation arise. He might have put the blame on one Mohamed Rafiq but he did not depose before the Workmen Compensation Commissioner. The witness examined from R.D.O. Office also did not speak about the alleged sale. Except the ipse dixit of a witness from the Insurance Company there is nothing to exclude Mohammed Mustafa as the owner of the vehicle. However, even for an argument sake, the sale of a movable like the vehicle stands registered. The propriety of a movable like vehicle will transfer not upon mere sale but it will take effect on proper registration with the RDO. Further there is deemed transfer also. In all cases, the insurance coverage will goes along with the vehicle. Otherwise every owner will try to cheat the claimant.

10.The evidence adduced shows that when 1st respondent was not having batch with endorsement. Under such circumstances, there is violation of terms and conditions of the policy. Thus, it is a fit case to invoke 'pay and recovery' (see NANJAPPAN V ORIENTAL INSURANCE CO. LTD. AND OTHERS (2003(1)L.W. 77).

11.In the circumstances, there shall be modification in the order of the Commissioner for Workmen Compensation, Tiruchirappalli to the effect that the appellant is bound to pay the compensation to the claimant, but it can seek return of money from its insured. But that will be a matter of fight between the vehicle owner and Insurance Company. In the circumstances, the substantial questions of law are answered against the appellant."

4. It is seen that the Authority has held that there was a loss of earning capacity at 50% on account of the injury suffered by him and that there is a physical disability and functional disability. Though the accident and injury suffered by the applicant are not in dispute and the authority has

rightly calculated the wage, age and loss of earning capacity, still it is mandatory on the part of the authority to consider as to whether there is employer and employee relationship between the 1st and 2nd respondents. There is no iota of evidence adduced to show that the applicant was a driver employed by the 2nd respondent herein. A bare reading of the FIR No.143 of 2003 dated 08.04.2003 clearly reveals the fact that while the applicant and his friends were returning from Theni to Coimbatore, they had met with an accident and nowhere it was stated that the applicant was employed under the 2nd respondent and in the course of the employment, he had driven the car. Thus, it is obvious that there was no employer and employee relationship between R1 and R2 and therefore, foisting liability on the insurance company to pay compensation is unacceptable.

5. The judgment relied upon by the applicant is not applicable to the facts of the present case on the simple reason that this Court in that case had considered the employer and employee relationship of the parties and had passed the order of pay and recovery in the light of the decision in Nanjappan vs. Oriental Insurance Co. Ltd. and others, reported in 2003 (1) L.W.77.

6. In the present case on hand, as per the version in the FIR, the applicant and his friends travelled together in a car to purchase a car for their business and met with their bad fate and for the purpose of filing a claim petition under W.C.Act, the case has been improved so as to portray that the applicant was employed under the 2nd respondent and this Court is not inclined to accept the same.

7. For the foregoing discussions and observations, I am of the view that the order of the authority under W.C.Act has no legs to stand and the same needs to be interfered with. Accordingly, the Civil Miscellaneous Appeal is allowed and the order of the Deputy Commissioner of Labour, Salem dated 30.11.2009 made in W.C.No.126 of 2006 is set aside. The amount of compensation deposited by the appellant is ordered to be refunded to the appellant together with accrued interest forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD I)

//True Copy//

Sub Assistant Registrar

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To:

1. The Deputy Commissioner of Labour,
Salem

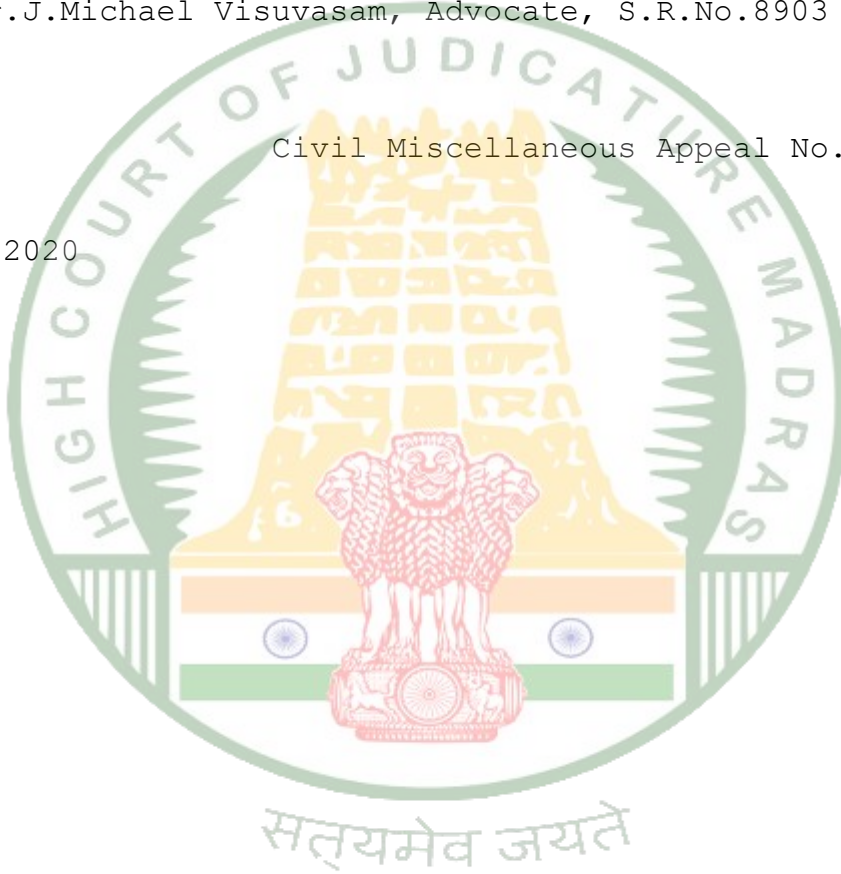
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2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.8903

Civil Miscellaneous Appeal No.804 of 2010

VBA (CO)
KKV/19/05/2020



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