

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2531 of 2015
and M.P.No.1 of 2015

United India Insurance
Company Limited,
14/1-77B, Salem Main Road,
Pudhuchampalli,
Mettur Dam - 636 403

... Appellant

Vs.

1. D.Manikandan
2. Dharmalingam

.... Respondents

Civil Miscellaneous Appeal is filed under Order XLIII Rule 1 of CPC to set aside Section 30 of the Workman's Compensation Act, 1923 to set aside the order dated 11.05.2015 made in W.C.No.44 of 2010 on the file of the Commissioner for Workman Compensation (DCL) at Salem with costs.

For Appellant : Mrs.I.Malar

For Respondents : Mr.C.Kulanthaivel for R1

No appearance for R2

J U D G M E N T

The appellant has filed the present Civil Miscellaneous Appeal under Section 30 of the Workman's Compensation Act, 1923 to set aside the final award dated 11.05.2015 passed by the Commissioner for Workman Compensation (DCL) at Salem in W.C.No.44 of 2010 and to dismiss the claim petition.

2. The case of the 1st respondent / claimant is that he was working with the 2nd respondent as a co-driver for the mini tempo and the said vehicle belongs to the 2nd respondent. The 1st respondent was paid a sum of Rs.6,000/- as salary, per month and that apart, a sum of Rs.100/- was paid as daily batta. One S.Mohan, son of Siddaian, had worked as driver in the above said vehicle. During the course of employment with the 2nd respondent, the 1st respondent, on 21.02.2009 at about 2.30 p.m., was driving the Mini Tempo Vehicle, extremely left side, bearing Regn.No.TN30 Z 3931 from Kolathur to Chennampatti on the main road with the aforesaid driver, viz., S.Mohan, near

Pappathi Kattu Pudur, at that time, a cow suddenly crossed the road, the 1st respondent applied brake, the vehicle turned turtle and capsized. Due to the said accident, the 1st respondent sustained grievous injuries and multiple fractures all over the body. Immediately, he was admitted in a private hospital for first aid and thereafter, he was admitted to CMC Hospital at Kovai as inpatient. Moreover, with regard to the accident, a complaint was lodged by the 2nd respondent and FIR was registered by the Vellithiruppur Police for offences under Sections 279 and 337 of IPC in Crime No.51 of 2009. Further, the 1st respondent is not able to do any work because of his permanent disability and he had incurred heavy expenditure for medical treatment, therefore, he has claimed a sum of Rs.10,00,000/- towards compensation.

3. Per contra, the appellant denied the contentions and the averments of the 1st respondent. Moreover, the 1st respondent is none other than the son of the 2nd respondent and he was not a paid driver. There is absolutely no employer and employee relationship between the 1st and 2nd respondents. As the 1st respondent is not an employee under his father, viz., 2nd respondent, the 1st respondent cannot file a petition under workmen compensation Act and the 1st respondent purposely suppressed that the 2nd respondent is his father.

4. Besides the above, it is the case of the appellant that on 21.2.2009 at about 2.30 p.m, the 1st respondent was driving a Mini Tempo and that the mini tempo was capsized, are not disputed. The further allegation that the 1st respondent was driving the mini auto under the guidance and directions of one S.Mohan are denied as false. The said Mohan did not travel in the vehicle on that day and that the said Mohan was not a driver under 2nd respondent. The 1st respondent had no driving licence to drive the mini Tempo Van. The 2nd respondent knew that his son, the 1st respondent had no driving license. The 2nd respondent permitted the 1st respondent to drive the vehicle without a driving licence. The 1st and 2nd respondents violated policy conditions. As per Insurance Policy issued to the vehicle, no one is permitted to drive the vehicle without a driving licence. As the policy conditions are violated, the appellant is not liable to pay any compensation and seeks to dismiss the petition.

5. Further, it is stated by the appellant that the nature of treatment, the duration of treatment and the various disabilities alleged to have been caused as a result of the injuries, are not admitted. The 1st respondent is bound to prove the said injuries by valid medical certificates issued by

competent authority and by documentary evidences. The 1st respondent is fully alright and there is no permanent disability for him. Also, the age, avocation and the monthly income of the 1st respondent alleged in the petition are not admitted. Therefore, the appellant prays to allow the present appeal and set aside the order of the court below.

6. By taking note of evidences of P.W.1, viz., 1st respondent and P.W.2, viz., Mohan, and the documents viz., Exs.P.1 to P.10, the court below had come to the conclusion that the 1st respondent had driven the vehicle of the 2nd respondent and due to the same, the 1st respondent had sustained grievous injuries. Since there is no documents produced on the side of the claimants to prove that the 1st respondent had received a salary of Rs.9,000/-, the court below by taking note of the provisions of the Act, had arrived at a minimum salary of Rs.4,000/- and taking shelter of Ex.P.7, disability certificate, given by the Doctor stating that the 1st respondent had suffered 70% disability the court below had assessed 70% disability and in total, a sum of Rs.3,74,153/- was awarded to the 1st respondent and the same was directed to be paid by the appellant. Aggrieved against the same, the appellant is before this Court.

7. The learned counsel for the appellant submitted that the court below has committed grave error in awarding compensation to the claimant in the absence of any documentary evidence to show that the accident had occurred during the course of employment. The court below ought to have considered that there was no employee-employer relationship between the 1st and 2nd respondents, because of the fact that the 2nd respondent is the father of the 1st respondent. There was no privity of contract between the appellant/Insurance Company and the 1st respondent at the time of accident. Therefore, he pleaded to set aside the order passed by the court below.

8. The learned counsel for the appellant has raised the following substantial questions of law for consideration:

(1) Whether the Commissioner for workman Compensation is correct in awarding compensation to a person not coming under the purview of WC Act?

(2) Whether the Commissioner for Workman Compensation ought to have considered that the claimant did not having appropriate license to drive the offending vehicle at the time of accident and the rights and liabilities of the parties to the contract of Insurance would be governed thereby subject to the provisions of the Motor Vehicle Act?

(3) Whether the Commissioner for Workman Compensation is correct in awarding compensation that there was no employer employee relation between the claimant and the 2nd respondent herein?

(4) Whether the Commissioner for workman Compensation was correct in holding that the appellant is liable to pay compensation inspite of the fact that there was no privity of contract between the appellant insurance company and the claimant at the time of accident?

(5) Whether the Commissioner for Workman Compensation was correct in holding that the Appellant is liable to pay the compensation awarded in spite of the fact that the policy does not cover the said risk?'

9. The learned counsel for the appellant relied on the Judgment of Madurai Bench of this Court in CMA (MD) No.10354 of 2007 [Sivamurugan V. Sivanu and another]

10. The learned counsel for the 1st respondent relied on the Judgment of High Court of Uttarakhand at Nainital reported in 2010 ACJ 964 [United India Insurance Co. Ltd., V. Baljeet Kaur and another] wherein it is held that 'claimant could not be deprived of getting compensation on account of relationship of father and son between owner and driver of vehicle and the finding recorded by the Workmen's Compensation Commissioner is absolutely justified'.

11. Though court notice was ordered to the 2nd respondent and the same has been served as early as on 24.02.2017, there is no representation for the 2nd respondent either-in-person or through learned counsel.

12. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent and perused the documents placed on record.

13. It is seen from the records that by taking note of G.O.2(D)J.1 No.47 dated 01.08.2003 and by taking note of Section 4(1) Explanation II in Workmen Compensation Act, a sum of Rs.4,000/- is fixed as monthly income. Also considering Ex.P.6, Disability Certificate, given by the Doctor of Coimbatore Medical College and Hospital, wherein it is averred that "1) Crush Lacerated injuries at right elbow exposing bone muscle c vascular injury about 1.5X3cm, 2) Multiple abrasion over PCP, 3) A lacerated injury over right of 3X1cm, 4) A lacerated injury over right 10X5cm" and from the perusal of the photographs, it

is clear that the claimant's right hand has been amputated and the disability certificate given by the Government of Tamilnadu, the disability has been assessed to 70%.

14. Apart from that, the appellant is the insurer of the vehicle and the insurance policy was in existence at the time of accident, the same is evident from Ex.P.10. The contention of the appellant that the 1st respondent / claimant has violated the policy conditions cannot be accepted, because of the reason the claimant had possessed learner's license (Ex.P.2), wherein it is stated that ".....is licensed to drive throughout India as learner subject to the provisions of rule 3 of the Central Motor Vehicle Rules 1989 a motor vehicle of the following description: Motor cycle with gear / scooter, light motor vehicle non-vehicle of the following description: Motor cycle with gear/scooter, light motor vehicle non-transport' and the same was in existence. Further, from the evidence of P.W.2, Mohan, [who is a authorised person to drive a vehicle and possessing a valid driving license] it is clear that he was sitting beside the driver of the vehicle/claimant.

15. That apart, even assuming for a moment that if a person had driven the vehicle loaded with goods, then, he should have a badge endorsement, but, in the present case, at the time of accident, there were no goods loaded in the vehicle and the accident had occurred only when the vehicle had returned from service. As per Learner's certificate, a person, who had possessed valid driving license had also accompanied the 1st respondent / claimant and that the claimant had not driven the heavy loaded vehicle. Also, it is clear that the claimant /1st respondent is qualified to drive the vehicle and that the policy conditions have not been violated.

16. Moreover, as per decision reported in 2008 LIC 3317 [New India Assurance Company Limited V. Gajann D.Dengi & Another, wherein it is averred that there can be a employer-employee relationship between the father and son, hence the contention of the appellant that there is no employee-employer relationship between the 1st and 2nd respondents is rejected in toto.

17. Accordingly, considering all the above reasonings, the court below has rightly fastened the liability on the appellant, with which, this Court does not find any reason to interfere with the same. Hence the award passed by the Commissioner for Workman Compensation (DCL), Salem in W.C.No.44 of 2010 dated 11.05.2015 is confirmed and the present Civil Miscellaneous Appeal is dismissed and the substantial question of law raised

by the appellant are answered accordingly. Consequently connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CCC)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner for Workman Compensation
(DCL) at Salem.

2. The Section Officer,
VR Section,
Madras High Court,
Chennai

+1 cc to M/s.C.Kulanthaivel, Advocate Sr.No. 13889

+1 cc to M/s.I.Malar, Advocate Sr.No. 13705

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M.P.No.1 of 2015



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