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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.322 of 2013

M/s.ICICI Lombard General Insurance Company Ltd.,
'Arihant Plaza',
No.84 & 85, Walltax Road,
Chennai-600 003.

... Appellant/2nd Respondent

Vs.

1. P.Rajendiran

...1st Respondent/Applicant

2. C.Maria John Varghuse

...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 against the Award dated 24.07.2012 made in W.C.No.418 of 2009 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour-II), Teynampet, Chennai-6.

For Appellant : Mrs. R.Srividhya

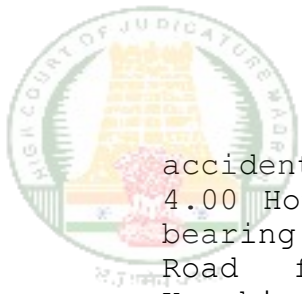
For Respondent : Mr.K.Varadha Kamaraj [R1]
R2 served - No Appearance

J U D G M E N T

The appellant has filed this appeal against the Award dated 24.07.2012 made in W.C.No.418 of 2009 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour-II), Teynampet, Chennai-6.

2. The appellant herein is the 2nd respondent-Insurance Company in W.C.No.418 of 2009.

3. The case of the claimant before the Commissioner for Workmen Compensation (Deputy Commissioner of Labour-II), Teynampet, Chennai-6 is that he was working under the 1st respondent as a driver of the lorry bearing Registration No.TN-22-AY-2306, on a monthly salary of Rs.6,000/- and on the date of



accident, the claimant was 33 years old. On 07.05.2009, around 4.00 Hours, while the claimant/petitioner was driving the lorry bearing Registration No.TN-22-AY-2306 proceeding to Vandaloor Road from Kelambakkam, near Melkottaiyur Spic Company, Kanchipuram, applied the brake to give way to the vehicle which was coming from the opposite direction, unfortunately, the claimant/petitioner's vehicle capsized, due to which the claimant sustained serious injuries. The claimant/petitioner was admitted as inpatient at Parvathi Hospital at Chrompet and the same was registered at E-9, Thazhambur Police Station, Kanchipuram in Crime No.141/2009. He was also claimed a sum of Rs.5,00,000/- as compensation for the injuries sustained by him, which arose during the course of employment under the 1st respondent. He also submitted that the vehicle was insured with the 2nd respondent/appellant herein, which was valid from 08.02.2009 to 07.02.2010 and hence both the respondents 1 and 2 are liable to pay compensation to the claimant. the Deputy Commissioner of Labour-II, after contest has awarded a sum of Rs.1,45,195/- to the claimant, in default to pay interest at the rate of 12% per annum from the expiry of the 30 days on the judgment.

4. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

5. The following substantial questions of law has arisen in this appeal:

'a) Whether the learned Commissioner has failed to note that the vehicle TN-22-AY-2306 was driven without valid F.C. and as such the Insurer is not liable to pay compensation?

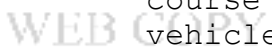
b) Whether the learned Commissioner has failed to note that the defence of Appellant is not confined to the provisions of M.V.Act?

c) Whether the learned Commissioner has failed to note that one A.Palanisamy was the owner of lorry and the first Opposite Party was neither the owner of Lorry nor the employee?

d) Whether the learned Commissioner had not appreciated the evidence properly but there was a gross mis-appreciation?

e) Whether the Award of the learned Commissioner is liable to be set aside?

6. The counter was filed by the 2nd respondent in the claim petition stating that no notice was served on them and also denied that there was no relationship between the 1st respondent and the claimant. As the claimant was employed with one Palanisamy, whereas the vehicle was insured in the name of Maria John Verghese. He also submitted that no material was produced



7. The nature of the accident also occurred during the course of employment and there was no proof to show that the vehicle was involved in the accident. It is also brought to the notice of this Court that the vehicle has been sold to another person as it is seen from the insurance policy and also there was no fitness certificate produced by the said 1st respondent for plying the vehicle on the said date. As per the policy conditions, violation of Rule 116 of Motor Vehicles Act, for the absence of R.C.Book, no compensation need to be paid to the claimant by the 2nd respondent/Insurance Company. In the absence of the same, the 1st respondent alone is liable to pay compensation.

9. It is the case of the 2nd respondent that there is no Fitness Certificate and also no evidence to show that there was a relationship between the parties. As per the First Information Report, it is seen that the said vehicle has been sold to Palanisamy and the name has not been changed in the R.C.Book and policy and in that case, a person, who has purchased the same has to compensate the claimant and not the 2nd respondent. When there is no Fitness Certificate, and no agreement between the claimant and 1st respondent, regarding employment, this has to be dismissed.

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available for verification, hence, the same should be taken in favour of the claimant and the 1st respondent and the issue is decided in favour of the 1st respondent and the claimant.

11. The specific allegation by the 2nd respondent is that in the additional counter, no Fitness Certificate has been in existence as the same being expired on the date of accident was not at all considered but simply stated that insured lorry was available for verification and hence in the absence of examining the R.T.O., proved the same that the 2nd respondent is liable to pay compensation and this observation is totally on a wrong consideration. It is seen from the First Information Report that he was working with one Palanisamy and as per the inspection, the said vehicle was in the hands of the said Palanisamy and Mani and Palanisamy is a person who had admitted the claimant in the hospital and also Padmanaban, Sekar and Radha had given evidence that Palanisamy is the owner of the vehicle was not at all considered. As per the said R.C.Book, Fitness Certificate was not available on the date of accident, the same was not at all considered.

12. Apart from the above, no documents have been marked to prove that 2nd respondent had sold or not sold the vehicle. In such view of the matter, the appellant is directed to pay to the 1st respondent/claimant and recover the same from the 2nd respondent/owner/insured. Since there is no dispute or arguments advanced with regard to the quantum arrived at, this Court hereby confirms the findings of the court below.

13. With the above observations and directions, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssn

To

1.The Commissioner for Workmen Compensation
(Deputy Commissioner of Labour-II),
Teynampet,
Chennai-6.



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

+1cc to M/s.R.Sree Vidhya, Advocate, S.R.No.141471

+1cc to M/s.K.Varadha kamaraj, Advocate, S.R.No.13870

C.M.A.No.322 of 2013

CP (CO)
KKV/14/07/2020