

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.587 of 2018

D.Paramasivam

... Appellant

Vs.

1.Umesh Gupta

2.Divisional Manager,

National Insurance Co., Ltd.,

Divisional Office, 74-A,

Paramathi Road, Namakkal

... Respondents

Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, 1923 to set aside the order dated 16.12.2015 passed in W.C.No.210 of 2015 on the file of Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Coonoor [Namakkal Camp].

For Appellant : Ms.Gayathri for
Mr.C.Kulanthaivel

For Respondents : Mr.S.Vadival for R2
R1 - Exparte

J U D G M E N T

The appellant has filed the present Civil Miscellaneous Appeal under Section 30 of Workmen Compensation Act, 1923 to set aside the order dated 16.12.2015 passed in W.C.No.210 of 2015 on the file of Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Coonoor [Namakkal Camp].

2. The appellant / claimant had worked under the 1st respondent, as driver and 1st respondent is the owner of the minidoor auto and the 2nd respondent is the insurer of the said vehicle. On 07.05.2009, the minidoor auto, which had carried a machine used for mosaic polishing was driven by one Ganesan, who is the partner along with 1st respondent and when the vehicle was proceeding towards Namakkal from Narasimanpudur, at that time, near Narasimankadu Karadu Kanavai, the said vehicle had turned upside down and met with an accident. Due to the said

accident, the appellant has sustained grievous injuries and thereafter, he was admitted as inpatient in the Theepthi Hospital. Further, according to appellant / claimant, before the accident, he had earned a sum of Rs.7,000/- as salary and Rs.100/- as batta and he is the sole breadwinner of the family and that due to the accident, he is not able to stand, walk or even sit. Since at the time of accident, he was an employee of 1st respondent and that the vehicle belongs to 1st respondent and the said vehicle was insured with the 2nd respondent, the appellant / claimant filed a claim petition claiming a compensation of Rs.5,00,000/- against the respondents.

3. A detailed counter affidavit is filed by the 2nd respondent / Insurance company stating that the allegation that the appellant was a driver with the 1st respondent and the accident occurred in the course of accident, is not admitted, in fact, the FIR clearly states that the appellant is not a driver with the 1st respondent. As per the own version of the claimant, in the petition, it is clear that the vehicle was driven by another person, viz., Ganesan, hence it is clear that the appellant is not a driver at the time of accident and the accident had not occurred in the course of employment. Further, the seating capacity of Mini Door Auto, as per R.C., is two, in all, ie., a driver and a cleaner, whereas, in this case, there is already a driver driving the vehicle and hence there cannot be another driver, hence it is clear that the appellant is a gratuitous passenger. Moreover, the appellant had not sustained any bony injury, hence there cannot be any disability, accordingly, the 2nd respondent prays to dismiss the said claim petition filed by the appellant.

4. Before the court below, on the side of the appellant, he was examined himself as A.W.1 and the Doctor, who had assessed his disability was examined as A.W.2, no one was examined on the side of the respondents 1 and 2. Exhibits A.1 to A.10 were marked on the side of the appellant and Ex.R.1 was marked on the side of the 2nd respondent.

5. The court below by taking note of Ex.A.2, Vehicle's Registration Certificate and Ex.A.3 Insurance Policy had stated that the said vehicle belongs to the 1st respondent herein, whereas, in the FIR (Ex.P.1) the name of the owner of the vehicle is stated as 'Ganesan', by the appellant, therefore, had come to the conclusion that there is no employee-employer relationship between the appellant and the 1st respondent. However, there is no record produced to substantiate that the said Ganesan is the partner along with 1st respondent and since the 1st respondent's name does not find place in the FIR, the court below had dismissed the claim petition. Left with no other option, the appellant has come up with this present

appeal.

6. The learned counsel for the appellant submitted that even according to the FIR, the appellant had given statement that he is 'working as driver of the mini door auto bearing registration No.TN 34 A 0384' and that he had stated that the said Ganesan and Umesh Gupta were partners. However, it is to be noted that a driver may not be permitted to practically verify the partnership deeds or any documentary proof of ownership to work as driver.

7. The learned counsel for the 2nd respondent contended that the seating capacity of the Minidoor, as per R.C. is two, in all, i.e., a driver and a cleaner, but in the present case, there is already a driver driving the vehicle, viz., Ganesan, as per averment of the appellant in FIR and hence there cannot be another driver, viz., the appellant and in case of mini door auto, there is no additional driver. Therefore, he contended that the appellant is a gratuitous passenger and pleaded to dismiss the appeal.

8. Notice was ordered to the respondents by this Court as early as on 20.03.2018. The 1st respondent was set exparte before the court below and there is no representation on behalf of him either in-person or through learned counsel before this Court. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

9. While admitting the present Civil Miscellaneous Appeal on 20.03.2018, this Court has framed the following substantial questions of law for consideration:

'a) Whether there was an employer and employee relationship between the 1st respondent and the claimant / appellant at the time of accident?

b) Whether the claimant / appellant herein sustained injuries during and in the course of his employment?'

10. This Court is fully in agreement with the order passed passed by the court below because, firstly, when Ex.P.2, Vehicle Registration Certificate and Ex.P.3, Insurance Policy, clearly states that the name of the owner of the vehicle involved in the accident, [viz., Minidoor auto] as 'Umeshgupta', the appellant / claimant's contention that the owner of the vehicle is 'Ganesan' and the said Ganesan is the partner along with Umesh Gupta, cannot be accepted. Secondly, the said Ganesan was not impleaded as respondent in the claim petition and not examined as a witness to substantiate the case of the appellant. Thirdly, when the appellant / claimant has pleaded in the FIR that the owner of the vehicle is Ganesan, cannot now turn around and

contend that the owner of the vehicle is Umeshgupta and Ganesan is also the partner in the said company. Fourthly, though the appellant's contention that he being a driver, cannot be permitted by any company to peruse the documents of partnership deed finds some force, the same cannot be taken into account, because when the appellant / claimant had mentioned in the FIR that the owner of the vehicle is Ganesan, he failed to mention in the said document that the said Ganesan is also the partner along with Umeshgupta. Fifthly, the appellant in his claim petition has stated that he was working as a driver under the 1st respondent, but in the FIR, he has stated that he had driven the vehicle, which belongs to one 'Ganesan', hence, it is clear that there is no employee-employer relationship between him and the 1st respondent.

In the result, the present Civil Miscellaneous Appeal is dismissed and the order passed by the Commissioner cum Deputy Commissioner of Labour, Coonoor [Namakkal Camp] dated 16.12.2015 is confirmed. The substantial questions of law raised by this Court are answered accordingly. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ssd
To

1. The Commissioner cum Deputy Commissioner of Labour,
Coonoor [Namakkal Camp].
2. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1 cc to M/s.C.Kulanthaivel, Advocate Sr.No. 13891
+1 cc to M/s.s.Vadivel, Advocate Sr.No. 13687

C.M.A.No.587 of 2018

BP(CO)
RMP(16/07/2020)