

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.NO.1510 OF 2020

The New India Assurance Company Ltd.,

No.29, Second Floor, Ram Complex

Paramathi Road

Namakkal District 637 001

Appellant/2nd Respondent

-vs-

1. C.Tamilvanan

.. 1st Respondent/Petitioner

2. R.Paraman

.. 2nd Respondent/1st Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 30(1)(a) of the Workmen Compensation Act, against the order dated 14.02.2020 passed in E.C.No.232 of 2017 by the learned Deputy Commissioner of Labour, Coonoor.

For Appellant

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Mr.Ramakrishnan

for Mr.R.Neethi Perumal

JUDGMENT

Heard learned counsel for the appellant through video conferencing due to the Covid-19 pandemic.

2. The New India Assurance Company Limited, Namakkal, aggrieved by the impugned order dated 14.2.2020 passed in E.C.No.232 of 2017 by the learned Deputy Commissioner of Labour, Coonoor, has filed this civil miscellaneous appeal.

3. Learned counsel appearing for the appellant/Insurance Company pleaded that the impugned order passed by the learned Deputy Commissioner of Labour is contrary to law, against the evidence and facts of the case. Moreover, when the policy issued to the second respondent's vehicle is a special policy for special vehicle, namely, Crane, which has a seating capacity for only one person and no cleaner is required or covered, the Deputy Commissioner of Labour failed to see that on the date of accident, the victim was only a minor and his employment was prohibited. Secondly, when there was no master-servant relationship between the second respondent and the injured claimant, the Deputy Commissioner of Labour ought not to have

entertained the claim petition, as the master-servant relationship has not been established. Thirdly, the policy also has not covered the cleaner, as it is a special policy for special vehicle like Crane, which has a seating capacity for only one person and admittedly, the first respondent/Injured was only a cleaner. Arguing further, learned counsel for the appellant submitted that the injuries sustained by the first respondent, as per the First Information Report, are shown to be on the left foot which are not grave in nature, whereas the discharge summary states that the injuries are on the right leg, that indicates the non application of mind. Further, the finding of the Deputy Commissioner of Labour that premium was collected for cleaner is apparently wrong, for the reason that it is a third party policy and no premium has been collected for the cleaner at all. Therefore, the order passed by the Deputy Commissioner of Labour fixing the liability on the appellant/Insurance Company to pay the compensation is without any legal force and it is liable to be set aside.

4. Continuing his arguments, he stated that the second respondent, owner of the vehicle, did not admit that the first respondent/injured was employed with him and the injured was only engaged in the workshop and after sustaining injury while undertaking the repair work, the owner of the workshop had only taken the injured to the hospital and admitted him for treatment, that is reflected in the wound certificate. When there is no connection to the injuries sustained by the claimant and the said Crane, the owner of the workshop and the insured in a collusive way joined together and filed the claim petition on false premise. Now the insured, the owner of the workshop and the injured claimant have all joined together to get the compensation by wrongly mentioning that the claimant worked as a cleaner, but the employment of cleaner is not at all covered as per the registration certificate and the insurance policy. Moreover, the vehicle also comes under the miscellaneous special type category and the policy also shows the same. Since these crucial aspects have been completely overlooked by the Deputy Commissioner of Labour, Coonoor, the impugned order has to go.

5. This Court is unable to find any merit on his submissions. It is not in dispute that when the first respondent/claimant was working as cleaner in the Crane owned by the second respondent bearing Registration No.TN 28 AC 2271 on 12.4.2017, at about 8.00 P.M., when the Crane was lifting the iron beam, all of a sudden, the iron beam fell down from the Crane, resultantly, the first respondent/claimant sustained grievous injuries on his left foot. Immediately, he was rushed to Maruti Hospital, Namakkal for first aid and thereafter, when he was taken to Vinayaga Mission Hospital, Salem for further treatment, First Information Report marked as Ex.P1 was

registered, wherein it has been clearly stated that when the first respondent/injured was serving as cleaner in the Crane bearing Registration No.TN 28 AC 2271 owned by the second respondent, he sustained grievous injuries on his left foot. Even the discharge summary issued by Vinayaga Mission Hospital, Salem, Registration Certificate of the Crane bearing Registration No.TN 28 AC 2271 and the insurance policy, which were marked as Exs.P3, P6 & P7 also have been perused by the Deputy Commissioner of Labour to find out whether the Crane was having the insurance coverage and after seeing that the insurance policy was valid from 1.10.2016 to 30.9.2017 and after taking note of the fact that the accident took place on 12.4.2017 and also the registration of the First Information Report under Ex.P1, the Deputy Commissioner of Labour has rightly come to the conclusion that the claimant, who was employed under the second respondent-Paraman as a cleaner on a monthly salary of Rs.8,000/-, accepting the disability sustained by the claimant at 36%, has rightly fixed the compensation amount at Rs.3,93,103/- along with interest at the rate of 12% per annum payable after 30 days from the date of accident. Hence, this Court finds no infirmity with the impugned order. Accordingly, the civil miscellaneous appeal fails and it is dismissed. Needless to mention that the first respondent/claimant is entitled to withdraw the entire amount deposited with accrued interest by the Insurance Company before the Deputy Commissioner of Labour, Coonoor. Consequently, C.M.P.No.11183 of 2020 is also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Labour,
Coonoor.

+1cc to Mr.R.Neethi Perumal, Advocate, S.R.No.33385

C.M.A.No.1510 of 2020

SSD(CO)
CS/29/10/2020