

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.M.A. No.754 of 2014

Mr.S. Sivakumar

... Appellant

v.

1. Mr. S. Govindaraj

2. National Insurance Company Limited,
Near Old Bus Stand,
Salem - 1.

... Respondents

Civil Miscellaneous Appeal filed under section 10 of Workmen's Compensation Act, 1923, against the judgment and decree dated 30.04.2008 made in W.C. No.622 of 2005 on the file of the Deputy Commissioner of Labour, Salem.

For Appellant : Mr. S.P. Yuvaraj

For Respondents : Mr. J. Chandran - for R2
R1 - Not known

J U D G M E N T

Challenging the award passed in W.C. No.622 of 2005, on the file of the Deputy Commissioner of Labour, Salem, the claimant has filed the above Civil Miscellaneous Appeal.

2. The appellant-claimant filed the claim petition in W.C. No.622 of 2005 before the Deputy Commissioner of Labour, Salem, claiming a total compensation of Rs. 10,00,000/- for the injuries sustained by him on 18.08.2005.

3. The appellant was working as a driver under the 1st respondent and when he was driving an Auto bearing Registration No.TN-27-A-1332 belonging to the 1st respondent, he met with an accident on 18.08.2005 when two cyclists proceeding from the opposite direction. Due to the accident, the appellant sustained grievous injuries. At the time of the accident, he

was 24 years and was earning Rs.4,500/- per month. Since he suffered permanent disability, he filed claim petition before the Deputy Commissioner of Labour, Salem.

4. The Deputy Commissioner of Labour, Salem, by award dated 30.04.2008, awarded a sum of Rs.2,01,779/- as compensation by directing the 1st respondent-owner of the vehicle to pay the said compensation, for the injuries sustained by the claimant. The Deputy Commissioner of Labour fastened the liability on the 1st respondent for the reason that the appellant was not possessing the separate endorsement on the license for driving the Light Motor Vehicle. Challenging the fastened liability on the 1st respondent alone, the claimant has filed the above appeal.

5. At the time of admission of the above Civil Miscellaneous Appeal, the following substantial question of law arose for consideration:-

"(i) Whether the Trial Court is correct in fixing the liability on the first respondent that because of the Workman is not having the valid driving license?

(ii) Whether the Trial Court in passing order ought to have awarded interest at the rate of 12% from the date of petition till the date of realization of entire amount instead of no interest was awarded?

6. Heard Mr. S.P. Yuvaraj, learned counsel appearing for the appellant and Mr. J. Chandran, learned counsel appearing for the 2nd respondent.

7.1 Mr. S.P. Yuvaraj, learned counsel appearing for the appellant submitted that the Deputy Commissioner of Labour should have fastened the liability only on the 2nd respondent-Insurance Company for the reason that when the weight of the vehicle is less than 7500 kg, it should be construed as "light motor vehicle" and therefore, no separate endorsement on the vehicle is required.

7.2 . The learned counsel appearing for the appellant, in support of his contentions relied upon a judgment reported in 2018 (3) SCC 698 [Jagdish Kumar Sood v. United India Insurance Co. Ltd and others] has held as follows:-

" ... 4 The issue which arises before the Court is not res integra and is covered by a judgment of a three Judges of this Court in Mukund Dewangan v Oriental Insurance Company Limited [2017(4) RCR (Civil) 111 : 2017 (14) SCC 663] in which it has been inter alia held as follows:

"60.1. "Light motor vehicle" as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994." (Id at page 709)

60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10 (2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle (2017) 14 SCC 663 weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form." (Id at page 710)

8. Mr. J. Chandran, learned counsel appearing for the 2nd respondent submitted that the ratio laid down by the Hon'ble Supreme Court squarely applies to the facts and circumstances of the present case.

9. Having regard to the submissions made by the learned counsel on either side, following the ratio laid down by the Hon'ble Supreme Court in the judgment reported in 2018 (3) SCC 698 [cited supra], the order passed by the Deputy Commissioner of Labour is liable to be modified by fastening the liability on the 2nd respondent-Insurance Company.

10. Accordingly, the order passed by the Deputy Commissioner of Labour is modified by directing the 2nd respondent -Insurance Company to pay the compensation of Rs.2,01,779/- as awarded by the Deputy Commissioner of Labour, Salem to the appellant-claimant. The appellant is entitled to get interest @ 9% per annum from the date of the petition. In other aspects, the order passed by the Appellate Tribunal remain unaltered.

With these modifications, the Civil Miscellaneous Appeal
is allowed. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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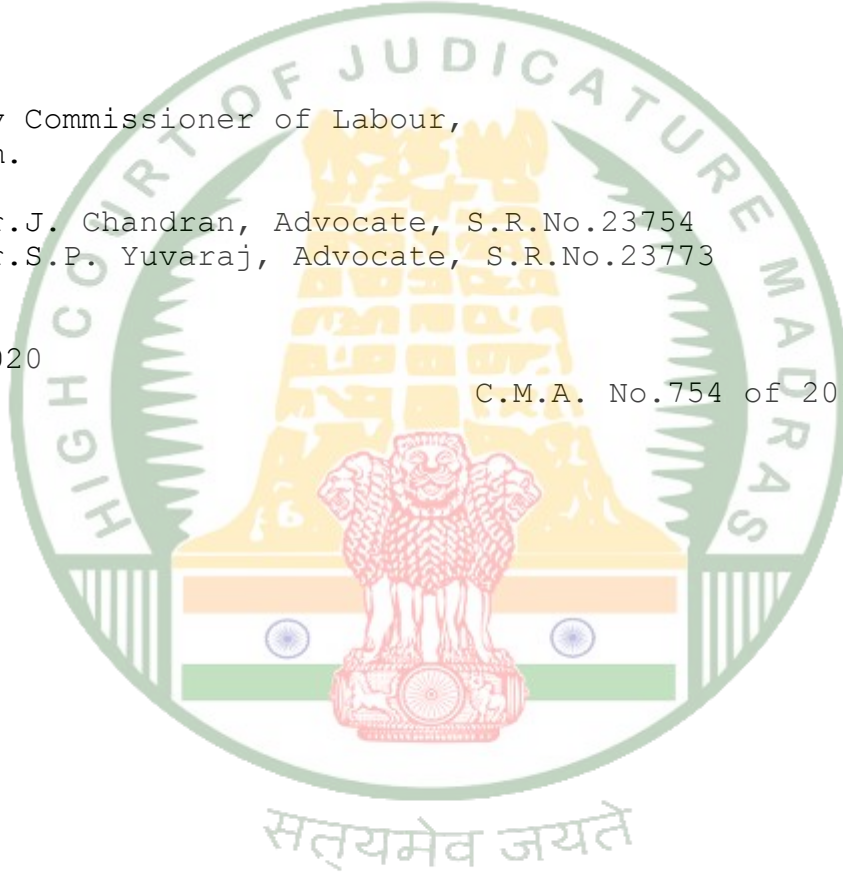
The Deputy Commissioner of Labour,
Salem.

+1cc to Mr.J. Chandran, Advocate, S.R.No.23754

+1cc to Mr.S.P. Yuvaraj, Advocate, S.R.No.23773

PPA(CO)
EU 24.6.2020

C.M.A. No.754 of 2014



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