

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.3367 of 2019
and C.M.P. No.19641 of 2019

M/s.National Insurance Co. Ltd.
Motor Thirty Party Cell
No.751, Anna Salai
III Floor, Chennai - 600 002 ... Appellant/2nd opposite party

vs.

1.K.Thuvaraknathan ... 1st respondent/applicant
2.M.Keerthy ... 2nd respondent/ 1st opposite party
3.M/s.Omeon Solutions Pvt. Ltd.
Alsa Towers, 5th Floor
Office Space No.1
No.186-A & 187, New No.279
Poonamallee High Road
Chennai - 600 010 ...3rd Respondent/ 3rd opposite party

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-I) at Chennai - 600 006 dated 20.05.2019 made in W.C. No.99 of 2015.

For Appellant : Mr.R.Ravichandran
For Respondents : Mr.K.Varadha Kamaraj for R1

J U D G M E N T

The present appeal has been preferred by the insurance company, challenging the order of the Authority under the Workmen's Compensation Act, 1923, dated 20.05.2019 made in W.C. No.99 of 2015, foisting the liability of Rs.3,64,409/- together with interest at the rate of 12% per annum on the appellant herein.

2. Two issues have been raised by the insurance company. Firstly, when there is no evidence to the effect that the injured was a driver, more particularly, when he was driving his father's vehicle and met with an accident, in the absence of evidence, the Authority, ought not to have granted compensation. Secondly, if the court comes to a decision that there was a

employer - employee relationship, whether the percentage of liability arrived at is on the higher side or not. When the issue No.1 is answered, there is no necessity for answering issue No.2.

3. The case of the claimant before the authority was that he was employed under M.Keerthy to drive the vehicle on a monthly salary of Rs.15,000/- and he was 25 years old on the date of accident on 24.07.2014 and that the accident has arisen out of and in the course of employment and that a vehicle, which was coming from the opposite direction, dashed against the car that was driven by the claimant and suffered serious injuries and that the insurance policy has been taken, which was valid between 18.10.2013 and 17.10.2014 and that, employer will have to pay compensation and that as there is a policy taken, the same has got to be borne by the insurance company.

4. First opposite party, namely the father of the injured, did not appear and he was set ex-parte and they have not produced any evidence or pleadings before the authority. The case of the insurance company was that there was no employer-employee relationship and that there is no evidence to the effect that the injured was drawing a salary and that there is no evidence to the effect that the loss of earning capacity and the functional disability before the Authority. Since the claimant has driven the vehicle of the father, who was set ex-parte before the Authority, in order to gain advantage of the insurance policy, claim has been made against the insurance company and the Authority, with total non-application of mind, has foisted the liability on the insurance company to pay compensation to the claimant.

5. As no evidence was established to prove that the monthly salary of the claimant was Rs.15,000/-, taking note of the fact that minimum wages applicable to a driver was Rs.9,787/- per month, calculated compensation at Rs.8,000/- per month as per Workmen's Compensation Act and arrived at compensation payable by the first opposite party to the injured, which shall be paid by the insurance company. As there was a policy and that there was a loss of earning capacity at 35%, in terms of Section 30-A of the Act, the court, can interfere only if there is a substantial question of law. Wrong appreciation of evidence may not be a question of law, but when there is no evidence produced by the person, who claims to be an employee and that the father is the employer, nothing prevented the applicant from calling for the records and producing the documents before the Authority concerned.

6. The purpose of non-appearance of the father before the Authority itself is clear that they wanted to gain out of the policy taken, which is nothing but unjust enrichment. Since there is no employer - employee relationship established by the injured before the Authority and the Authority has erroneously come to the conclusion that there is a master and servant relationship and that the compensation has got to be paid by the first opposite party, which shall be borne by the insurance company, as there was a policy in force on the date of accident.

7. Even though there was a policy available on the date of accident, the claimant, as a matter of right, cannot ask the insurance company to bear the amount, as the case has not been properly established and that there is no employer - employee relationship between the applicant/claimant and Keerthi, namely the father of the applicant, this court is of the view that the order of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-I) at Chennai - 600 006 dated 20.05.2019 made in W.C. No.99 of 2015, has got to be interfered with and is set aside and the applicant/claimant is not entitled to any relief. The amount, if any, deposited by the insurance company, will have to be refunded to the insurance company together with accrued interest within a period of 15 days from the date of production of a copy of the order and a request made there on.

The civil miscellaneous appeal is allowed on the above terms. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(Asr)

To

The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour-I) at Chennai - 600 006
+1 CC to Mr.K. Varadha Kamaraj, Advocate, SR 13533
+1 CC to Mr. R.Ravichandran, Advocate SR 13794

C.M.A. No.3367 of 2019 and
C.M.P. No.19641 of 2019

MRP 28/05/2020