

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2424 of 2017

Suguna ... Appellant / 1st Respondent

Vs.

1. Karthikeyan ... 1st Respondent / Petitioner

2. The Oriental Insurance Company Ltd.,
2nd Floor, Siva Complex,
No.22-C, Saradha College Main Road,
Salem-16. ... 2nd Respondent/2nd Respondent

Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 to set aside the order passed by the Deputy Commissioner of Labour, Coonoor, (Erode Camp) in W.C.No.61 of 2015 dated 03.11.2015 fixing the liability on the appellant (owner of the Vehicle) and thereby direct the 2nd respondent herein to pay the compensation to the 1st respondent herein.

For Appellant : Mr. A.R.Suresh

For Respondent: Mr.M.J.Vijayaraghavan [R2]
R1 served - No Appearance

J U D G M E N T

The appellant herein is the owner of the vehicle has filed this appeal challenging the order dated 03.11.2015 in W.C.No.61 of 2015 passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Coonor, Erode Camp.

2. The case of the claimant/1st respondent herein is that when he was working under the appellant herein as a driver in the lorry bearing Registration No.KA.01.AE.1855, on 01.08.2009, he was loading the ropes which is to be taken to Coimbatore in the lorry at Pollachi near Negamam Police Station limit, at Chinneripalayam, at that time, the 1st respondent/claimant fell

down from the lorry and sustained serious and grievous injuries, due to which his left leg bone behind his knee got fractured and one of his nerves was carved and he was immediately taken to a private hospital at Pollachi for treatment and later, he was admitted in Vinayaka Hospital as in-patient from 02.08.2009 to 29.08.2009, and he had undergone surgery. At the time of hospitalisation, the claimant / 1st respondent spent more than a Lakhs of Rupees for the said treatment in the hospital. He has also filed a claim petition stating that the lorry was belonging to the 1st respondent / appellant herein and for the said accident which was happened in the course of employment, the appellant herein/1st respondent is liable to pay the compensation to the claimant, but, the appellant/1st respondent had informed the claimant/1st respondent herein that since the lorry has been insured with the 2nd respondent / Insurance Company, the claimant / 1st respondent herein would get necessary compensation from the Insurance Company and therefore, the claimant need not register any complaint before the concerned Police Station. Based on the assurance given by the appellant herein, the claimant did not give any complaint before the concerned Police Station and he asked the compensation from the respondents 1 and 2. Since he has not received any reply from the respondents 1 and 2 herein, he filed a claim petition before the Workmen's Compensation Authority.

3. The learned counsel for the appellant submitted that the Deputy Commissioner of labour has failed to consider that the appellant had categorically admitted the employment of the 1st respondent herein and she had admitted the 1st respondent herein sustained injuries during the course of employment when the accident took place on 01.08.2009 and the vehicle had insurance cover for the period between 24.01.2009 and 23.01.2010, ought to have directed the 2nd respondent/Insurance Company to pay the compensation, when nature of the accident, employment and the injuries sustained by the 1st respondent herein were proved which was disbelieved by the Authorities and had fixed the responsibilities on the owner of the vehicle/appellant herein for paying compensation to the 1st respondent and prays for setting aside the same.

4. The learned counsel for the appellant further submitted that the 2nd respondent/Insurance Company has not filed any counter in the claim petition in W.C.No.61 of 2015 and only cross examined the witnesses. Based on the same, the liability of the 2nd respondent was revoked and the responsibility was fixed on the owner of the vehicle, the appellant herein to pay the compensation, is against the evidence of the case and prayed for allowing the appeal and dismissing the said order passed by the Deputy Commissioner of Labour, Coonoor, (Erode Camp) in W.C.No.61 of 2015 dated 03.11.2015 fixing the liability on the

appellant (owner of the Vehicle) and thereby direct the 1st respondent herein to pay the compensation to the claimant.

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

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

'a) Whether at all the Deputy Commissioner of Labour, Coonoor (Erode Camp) is right in fixing the liability on the owner of the vehicle in the absence of any pleadings by the insurance company about the employment of the 1st respondent with the 2nd respondent?

b) Whether at all the Deputy Commissioner of Labour, Coonoor (Erode Camp) is right in not awarding any interest for default of payment by the 2nd respondent?'

7. It is true that the 2nd respondent has not filed any counter but, they appeared before the Court and based on the claim petition, counter filed by the 1st respondent and on the evidence, the Deputy Commissioner of Labour, Coonoor, (Erode Camp) has passed the order fixing the liability on the 1st respondent, the owner of the vehicle in W.C.No.61 of 2015 dated 03.11.2015 to pay a sum of Rs.1,60,168/- as compensation to the claimant.

8. The appellant herein had accepted that only on her directions, the claimant was acted and while he was performing the assigned task, he had slipped and fell down from the lorry and sustained grievous injuries.

9. The Commissioner of Labour has come to the conclusion that the claimant was working as a driver under the appellant, even though no documents have been filed to show his employment as the same has been accepted by the 1st respondent/appellant herein and the employer and employee relationship is proved. The doctor was cross-examined regarding the disability of the claimant and the doctor has given a certificate that the claimant had sustained 31% of disability as the bones have not joined properly and there are bony thickening in the bone, hence he has considered the injury sustained and fixed 31% disability. On clinical examination in his Left leg knee a Mild swelling is present with joint line Tenderness, Mild swelling present over the Middle part of left leg. Bony thickening present and Bony Tenderness present over the Middle part of left Tibia Bone and left Fibula Bone. The Doctor has also admitted that Tibia Bone and Fibula bone have not joined properly and hence, the claimant cannot walk as before and hence, the same was considered and

fixed at 20% disability and the same percentage of disability was accepted by the Authority also the Commissioner of Labour found that the lorry has been registered with the insurance company and covered under the policy issued by the 2nd respondent/Insurance Company, proper evidence has been produced by the 1st respondent/claimant to show that he had informed the 2nd respondent. Only at the time of cross-examination, the 2nd respondent has posed a question that no documents have been produced to show that the claimant was working as a driver under the 1st respondent/appellant and no First Information Report has been filed by the claimant or the 1st respondent and hence, the 2nd respondent suspected that the appellant herein and the claimant have colluded with each other and obviously made a false claim before the 2nd respondent / Insurance Company.

10. In the absence of First Information Report and medical discharge summary and no documentary evidence to prove the employer and employee relationship between the appellant herein and the 1st respondent and on admission of appellant the Commissioner of Labour considered the above facts and fixed on the 1st respondent/appellant herein.

11. In the absence of any pleadings to the effect that the claimant was not working under the appellant and no employer employee relationship or there is a violation of policy conditions and just because no First Information Report was registered, the Insurance Company cannot refuse to pay the appellant and plead that no such accident has been taken place. As there was an accident happened on 01.08.2009, as the claimant was also sustained grievous injuries, while driving the said lorry, it is proved that the accident happened during the course of employment, such being the case, it is also been pointed out by the claimant that he has not filed the First Information Report, only on the assurance given by the 1st respondent/appellant that as the vehicle is insured, the claim will be taken care by the insurance company. It is also seen from the pleadings that no First Information Report has been registered and a question was raised to the appellant whether the same was informed to the concerned insurance company, he had denied and a notice was sent to the 2nd respondent only at the time when the petition was filed. When the claimant was requesting the 1st respondent to pay him the compensation as he has spent more than a lakh of Rupees for medical expenses, the 1st respondent/appellant informed him that he will receive the compensation from the 2nd respondent/Insurance Company immediately and in the absence of any such information being given to the 2nd respondent, the 2nd respondent has rightly rejected the claim, that the appellant has not acted diligently

and as no First Information Report was registered, the appellant alone is liable to pay the compensation to the claimant/1st respondent.

12. It could be seen that the appellant herein had not acted diligently and has not proved his case that he had taken appropriate steps for seeking compensation from the Insurance Company to be paid to claimant, the lethargic and careless attitude of the appellant herein has resulted in this order and accordingly, the appellant herein has to bear the expenses of the claimant.

13. The order of the Deputy Commissioner of Labour, Coonoor, (Erode Camp) is perfectly in order and therefore, I do not see any reason to interfere with the findings recorded by her.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the findings of the Deputy Commissioner of Labour, Coonoor, (Erode Camp) in W.C.No.61 of 2015 dated 03.11.2015 is confirmed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commissioner of Labour,
Coonoor, (Erode Camp).

2. The Section Officer,
VR Section,
Madras High Court, सत्यमेव जयते
Chennai.

+1cc to M/s.A.R.Suresh, Advocate Sr.2653

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srg 19/02/2020