

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.799 of 2019 and  
C.M.P.No.2260 of 2019

The General Manager,  
M/s.United India Insurance  
Company Limited,  
No.48, 'Chandra Plaza' I Floor,  
Arcot Road, Saligramam,  
Chennai 600 093.

...Appellant

Vs.

1.S.Poongothai  
2.S.Rithish  
3.Mahalakshmi  
4.Punniyan  
5.D.Vasanthi

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, against the final Award dated 10th May, 2018, (received on 27.10.2018), passed by the learned Commissioner for Employees Compensation (Joint Commissioner of Labour -II) at Chennai in E.C.No.15 of 2016.

For Appellant : Mr.J.Michel Visuvasam  
For Respondents : Mr.M.Sivakumar for RR1 to 4  
5- Notice sent - vacated

J U D G M E N T

The award dated 10.05.2018, passed in E.C.No.15 of 2016 is under challenge in the present civil miscellaneous appeal.

2. The substantial question of law raised by the appellant Insurance Company is that whether the Joint Commissioner is correct in awarding compensation despite the fact that the claimant /driver was not possessing a valid driving licence. The another question of law raised in the appeal is that whether the liability saddled on the appellant can be sustained, when the entire evidence of the appellant with regard to breach of policy conditions by the fifth respondent in allowing the deceased, not

duly licenced to drive the Autorickhaw, is completely overlooked by the Joint Commissioner of Labour.

3. The facts are not disputed. The accident was established and the policy was in force. However, in the finding of the Joint Commissioner of Labour in the award, it is categorically established through Ex.P5 that the deceased Seenu was not possessing a valid driving licence at the time of the accident. The driving licence expired on 20.10.2014 and the said factum was established in the report. The accident occurred on 28.09.2015, after 11 months from the date of expiry of the driving licence.

4. This being the factum established before the Joint Commissioner of Labour, as per the terms and conditions of the Insurance Company, the liability cannot be fixed on the appellant. In view of the fact that the employee employer relationship existed at the time of the accident and the accident occurred during the course of the employment, the liability is to be fixed on the owner of the vehicle Smt.Vasanthi, the fifth respondent herein.

5. Accordingly, the awarded compensation is to be paid by the fifth respondent to the respondents 1 to 4 along with interest at the rate of 12% per annum from the date of expiry of 30 days from the date of the accident. Thus, the award dated 10.05.2018 passed in E.C.No.15 of 2016, is set aside as far as the appellant Insurance Company is concerned. The said award stands confirmed as against the fifth respondent who is the owner of the vehicle. Consequently, C.M.A.No.799 of 2019 stands allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

6. The appellant Insurance Company is permitted to withdraw the deposited amount along with accrued interest by filing appropriate application before the competent authority. The payments are to be made through RTGS.

Sd/-  
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

gsk

To

The Joint Commissioner of Labour -II,  
Chennai.

+1cc to Mr.C.Prabakaran, Advocate, SR.No.5412

+1cc to M/s.J.Michael Viswasam, Advocate, SR.No.5265

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GMR (CO)  
KKV/15/03/2021



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