

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.01.2021
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.1320 of 2008
and
M.P.No.1 of 2008

Messers The United India Insurance Co., Ltd.,
Motor Third Party Cell, 38, Anna Salai,
Chennai - 2.

..Appellant

Vs.

1.Thiru.M.Erudhayaraj
2.Thiru.M.Mohan

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, against the order dated 12.10.2007 made in W.C.No.485 of 2006 on the file of the Court of Commissioner for Workmen's Compensation (Deputy Commissioner of Labour - 2) at Chennai and received on 31.12.2007.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.M.Pachaiyappan
[For R1]
R2 - Want of correct address

J U D G M E N T

The Award passed in W.C.No.622 of 2016 dated 12.10.2007 is under challenge in the present Civil Miscellaneous Appeal.

2. The Substantial questions of law raised in the appeal on hand are that Whether liability can be fastened on the insurer when the contract of insurance does not give coverage for such type of person, more specifically for a Cleaner in the present case, when there is no coverage for the Cleaner under the terms and conditions of the Insurance policy; Whether the Deputy Commissioner of Labour is empowered to fix the loss of earning capacity overlooking the provisions of Section 4(1)(C)(II) of Workmen's Compensation Act, when there is no evidence fixing loss of earning capacity by a qualified medical practitioner.

3. The 1st respondent filed an application under Section 10 of the Workmen Compensation Act, 1923 on the ground that he was engaged as a Cleaner by the 2nd respondent/Mr.M.Mohan in his

lorry bearing Registration No.MSY.2106. The 1st respondent has stated that he was drawing a monthly salary of Rs.6,000/- on 30.09.2006 at about 6.00 A.M., when the 1st respondent was on duty as Cleaner, a load of Rubbies which was demolished from the old building into the lorry at Door No.129, Broad way Road, which was parked, suddenly the wall of the building had broken and fell down on the 1st respondent. The 1st respondent sustained injuries and a F.I.R. was filed in Crime No.725/2006. The 1st respondent filed application, seeking compensation.

4. The appellant/Insurance company raised objections mainly on the ground that the application for compensation itself is not maintainable. The accident occurred on 30.09.2006 at 06.00 hours and the 1st respondent/applicant was working as a Cleaner and sustained injuries during the course of his employment. The said factum itself is incorrect. The 1st respondent has not established these factors before the Deputy Commissioner of Labour. The application is not maintainable, in view of the fact that the 1st respondent was not employed as Cleaner in lorry bearing Registration No.MSY.2106. The Injury allegedly sustained were no way connected with the 2nd respondent's lorry, the lorry bearing Registration No.MSY.2106 was not parked in front of Door No.129, Broadway on 30.09.2006 at about 06.00 hours. The 1st respondent had colluded with the 2nd respondent and filed the application for unjust enrichment. This apart, there is no coverage in the Insurance policy as far as Cleaner is concerned. When the accident was not occurred during the course of employment and the facts are also contradictory, the Deputy Commissioner of Labour has committed an error in granting compensation.

5. This Court is of the considered opinion that the Deputy Commissioner of Labour proceeded on the basis that the vehicle bearing Registration No.MSY.2106 was insured with the appellant / Insurance company. Further, the Deputy Commissioner of Labour made a finding that there was no coverage for the Cleaner as per the terms and conditions of the policy. The coverage was in force in respect of a third party liability alone. When there is no policy at all, there is no reason to grant compensation. In such circumstances, the owner of the vehicle is liable to pay compensation.

6. In the present case, the 2nd respondent, who is the owner of the vehicle, is liable to pay the compensation to his employee. Contrarily, the compensation cannot be granted in violation of the terms and conditions of the Insurance policy. The 1st respondent has not established that as per the coverage, the Cleaner is entitled to get compensation from the Insurance company.

7. In the absence of establishing such factors, the Deputy Commissioner of Labour has committed an error in granting compensation by fixing liability on the appellant/United India Insurance company. This being the factum, this Court is of the considered opinion that the 2nd respondent/owner of the vehicle is liable to pay compensation to the 1st respondent/employee. As far as the appellant/ Insurance company is concerned, they have established that there is no coverage for Cleaner with reference to the terms and conditions of the Insurance policy and no such coverage was established by the 1st respondent during the course of trial before the Deputy Commissioner of Labour. Accordingly, the questions of law raised is accepted and the liability cannot be fastened on the insurer when there is no contract of insurance policy providing coverage to the applicant.

8. Thus, the Award dated 12.10.2007 passed in W.C.No.622 of 2016 is set aside and the Civil Miscellaneous Appeal in C.M.A.No.1320 of 2008 stands allowed. The appellant is permitted to withdraw the amount already deposited along with accrued interest by filing an appropriate application before the Deputy Commissioner of Labour. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Court of Commissioner
for Workmen's Compensation
(Deputy Commissioner of Labour - 2)
Chennai.

Copy to:
The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.M.krishnamoorthy Advocate sr3102
+1 cc to Mr.M.Pachaiyappass Advocate sr3376

C.M.A.No.1320 of 2008

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