

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 07.01.2021

JUDGMENT DELIVERED ON: 19.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.3804 of 2008

and

M.P.No.1 of 2008

A.Indirani .. Appellant/1st Respondent

Vs.

1.V.Mani

S/o.Varadhan ...1st Respondent/Petitioner

2.The United India Insurance Co. Ltd.,

Divisional Office- 2,

Salem.

...2nd Respondent/2nd Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, against the order dated 30.06.2008 made in W.C.No.540 of 2005, on the file of the Commissioner, Workmen Compensation, Tribunal, Salem.

For Appellant : Mr.S.Saravanakumar
for Mr.Sudhakar

For Respondents

For R2 : Mr.M.J.Vijayaraghavan

For R1 : No appearance

J U D G M E N T

The appellant herein is the first respondent in W.C.No.540 of 2005 filed before the Commissioner, Workmen Compensation, Tribunal, Salem, under whom the injured / first respondent herein was employed as a load man in the appellant's lorry bearing Registration No.TAB 2347, on 22.05.1997. The first respondent herein sat on the left side of the cabin, the lorry driver directed the first respondent to look left side in order to take the vehicle. While so the driver suddenly started the vehicle, thereby he fell down and sustained grievous injuries. Even after the treatment, he was not completely recovered. So, he claimed compensation by preferring the W.C.No.540 of 2005 before the Commissioner of Workmen Compensation / Tribunal, Salem.

2. The owner of the vehicle / appellant herein and the second respondent under whom the vehicle was insured also contested the case.

3. After full trial, the Commissioner of Workmen Compensation, Tribunal, Salem awarded compensation of Rs.81,783/- by directing the appellant / first respondent therein to pay the award amount based upon a reason that the alleged driver, kumar @ Padhmanaban had not driven the vehicle on the date of the accident, thereby exempted R2/ insurer from the liability. Aggrieved by the same, the owner of the vehicle / the appellant herein preferred the present appeal on the ground that the Tribunal erroneously fixed the responsibility on the appellant.

4. According to the appellant, she admits that she is the employer of the first respondent herein and there is employer and employee relationship between herself and the first respondent/injured, and also admits the manner of the accident happened during the course of the employment. According to her, on the date of accident, the lorry was driven by her driver Kumar @ Padhmanaban, against whom the FIR was also lodged. But the Commissioner, Workmen Compensation, Tribunal, Salem failed to appreciate this fact, nor accepted the evidence given by the said driver, who was examined as R.W.2. But the learned counsel for the second respondent submits that though the vehicle was insured in their company, but the owner of the vehicle / appellant failed to establish that a vehicle was driven by R.W.2 Kumar @ Padhmanaban on the date of accident.

5. Considering that as per the evidence of R.W.2 his nick name is Kumar @ Padhmanaban. But, while the statement was recorded by the Police immediately after the accident, the first respondent / injured stated that the vehicle was driven by the driver Kumar. Based upon that, FIR was lodged against Kumar, but the case of the appellant is that the driver's name is Padhmanaban and his nick name is Kumar. Accordingly, she pleaded that the vehicle was driven by Kumar @ Padhmanaban. When the said Padhmanaban was examined as R.W.2, he has stated that his parents as well as others call him as 'Kumar', so that only driver name was mentioned as Kumar at the time of giving the complaint. But the learned counsel for the second respondent argued that there is no evidence on the side of the appellant to prove that the driver's name is Kumar @ Padhmanaban. But the learned counsel for the appellant relied on the driving licence shown in typed set of papers at Pg.No.13 filed along with the appeal.

6. On perusal of records, it reveals that the name of the licence holder is Padhmanaban who admitted the offence and paid the fine before the Magistrate Court. This fact has not been denied by the second respondent / Insurance Company. As per the FIR, the case was lodged against one Kumar, but R.W.2, Kumar @ Padhmanaban appeared before the Magistrate Court and admitted the offence. But the learned counsel for the second respondent contended that one Kumar had driven the vehicle at the time of the accident not by R.W.2 and for that, he relied the investigation conducted by R.W.1 / his company's investigator. As per his investigation, it revealed that that said Kumar @ Padhmanaban had not driven the vehicle and he is the appellant's husband's brother. But except his oral testimony, there is no documentary proof about his enquiry and the alleged statement given by those persons. Apart from that, there is no independent evidence on the side of the second respondent/ Insurance Company to establish that R.W.2 Kumar @ Padhmanaban had not driven the vehicle on the date of the accident.

7. But the Tribunal relied on the evidence of investigator / R.W.1 and concluded that the vehicle was not driven by R.W.2 on the date of the accident. But as discussed above the injured, prima facie established that the vehicle was driven by R.W.2, his driving licence was also produced, and the said driver also admitted the offence and paid the fine before the Magistrate Court. Further, the vehicle was insured with the second respondent / Insurance Company. Therefore, the Tribunal's finding with regard to issue No.5 is set aside.

8. Accordingly, the appeal is allowed to the extent that the liability is fixed on the second respondent / Insurance Company and the compensation amount awarded by the Commissioner, Workmen Compensation, Tribunal, Salem is confirmed. Since the vehicle in question is insured with second respondent / Insurance Company on the date of the accident, the second respondent is directed to pay the compensation awarded by the Commissioner of Workmen Compensation / Tribunal, Salem in W.C.No.540 of 2005, within a period of six weeks from the date of receipt of a copy of this judgment failing which the first respondent is entitled to get interest at the rate of 12% from the date of accident till the date of deposit. If the owner of the vehicle had already deposited compensation amount has awarded by the Tribunal, the same shall be refunded to the owner of the vehicle. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Commissioner,
Workmen Compensation, Tribunal, Salem.

+1cc to Mr.M.J.Vijayaraghavan, Advocate Sr.No.2684

akm/17.03.21 /4p-3c/

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