

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

C.M.A. No. 2191 of 2010

M.P.No.1 of 2010

The Divisional Manager
National Insurance Company Limited,
74, Paramathi Road,
Namakkal.

... Appellant/
2nd Respondent

-vs-

1. A.Pazhaniappan ...1st Respondent/Petitioner
2. A. Elango ... Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923 against the order passed in W.C. No. 731 of 2006, dated 30.10.2009, on the file of the Workmen Compensation Commissioner, Deputy Commissioner of Labour, Salem.

For Appellant : Mr.N.B.Surekha

For Respondents: : Mr.C.K.M.Appasi
for Mr.K.Rajasekaran for R1
No appearance for R2

J U D G M E N T

The award passed in W.C. No. 731 of 2006 dated 30.10.2009 is under challenge in the present Civil Miscellaneous Appeal.

2. The first respondent one Pazhaniappan was working as a Lorry Driver with the second respondent, who is the owner of the vehicle bearing registration No. HR-63-A-9797. On 23.05.2006, the first respondent/Mr.Pazhaniappan was driving the vehicle which belongs to the second respondent from Tamil Nadu to Silvasa. At about 6.15 p.m., the first respondent parked the said vehicle opposite to Kounduskar Petrol Pumb at Gokul Shirgon M.I.D.C., on the left side of the Tamil Nadu to Mumbai Highway. After parking the vehicle, the first respondent / driver had gone to the Petrol Pumb for punching the card. While passing the

road on Pune to Bangalore Highway, one motor cycle bearing Registration No. MH-09-AA-2475 driven by its driver in a rash and negligent manner came from the wrong side of the Pune to Bangalore Highway and having lost its control, dashed on the backside of the first respondent Pazhaniappan. Due to the above accident, the first respondent sustained grievous injuries on his left hip, knee, ankle and all over his body. Immediately after the accident, he was admitted in the Doshi Hospital, Kolhapur and had taken treatment and then he continued his treatment in Ganga Hospital, Coimbatore.

3. The Deputy Commissioner of Labour adjudicated the issues with reference to the facts, evidence and documents. Accordingly, the liability was fixed on the appellant/National Insurance Company mainly on the ground that the lorry which met with an accident was insured with the appellant/Insurance Company and therefore, the appellant is liable to pay compensation to the driver of the lorry.

4. The contention of the appellant is that the lorry insured with the appellant/Insurance Company had not involved in the accident at all. The first respondent/driver, parked the lorry and walked on the Pune to Bangalore Highway to punch the card in the Petrol Pump. While crossing the road, the accident occurred and therefore, the lorry insured had not involved in the accident. Thus, as per the terms and conditions of the Insurance Policy, the appellant/Insurance Company is not liable to pay compensation to the lorry driver.

5. The learned counsel appearing on behalf of the first respondent disputed the said contention by stating that the owner of the lorry is liable to pay compensation as employer and the Insurance Company is consequently liable to pay the said compensation as per the Insurance Policy. Therefore, there is no infirmity as such in the award passed by the Deputy Commissioner of Labour and the appeal is liable to be dismissed.

6. Substantial question of law raised by the appellant is that whether the Deputy Commissioner of Labour is right in fixing the income of the claimant as per the provisions of the Act? Whether the Deputy Commissioner of Labour is right in fixing the liability on the Insurance Company, irrespective of the fact that the accident had not occurred while driving the insured vehicle?

7. This Court is of the considered opinion that with reference to the liability, undoubtedly, terms and conditions of the Insurance policy place a pivotal role. The liability is to be fixed based on the statutes and based on the Insurance Policy, if in-force. The Insurance policy is a contract. Thus,

in the event of any violation of the terms and conditions of the Policy issued by the Insurance Company, the liability cannot be fixed on the Insurance Company. Admittedly, the first respondent had parked the lorry and thereafter, walked on the Pune to Bangalore Highway in order to punch the card in the petrol Pumb. The lorry was just parked on the road side and the said lorry had not involved in the accident at all. When the driver of the lorry was walking towards the Petrol Pumb, another vehicle hit him and caused accident. Therefore, the accident is in no way connected with the lorry, which was insured with the appellant/Company. Thus, the Insurance Company is not liable to pay compensation. However, since the employer/employee relationship was established, the owner of the lorry is liable to pay compensation to the first respondent, who is the driver of the vehicle. During the course of employment, the accident occurred and the employer/employee was also established. Thus, the owner of the vehicle is liable to pay compensation to the employee.

8. This being the factum established, the Deputy Commissioner of Labour has committed an error in fixing the liability on the Insurance Company. The liability is to be fixed on the second respondent/employer. Therefore, the award deserves to be modified. However, the employee is entitled for compensation as awarded by the Deputy Commissioner of Labour along with interest at the rate of 12% per annum.

9. Under these circumstances, the second respondent/employer is directed to pay the awarded compensation in W.C.No.731 of 2006 to the first respondent/employee along with interest at the rate of 12% per annum.

10. Thus, the award dated 30.10.2009 passed in W.C.No.731 of 2006 is set aside, as far as the appellant/Insurance Company is concerned and the award stands confirmed in respect of the second respondent/owner of the vehicle. Accordingly, the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

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Sd/-
Assistant Registrar
//True Copy//

Sub Assistant Registrar

vji/ssb

To

The Workmen Compensation Commissioner,
Deputy Commissioner of Labour,
Salem.

+1 cc to M/s.N.B.Surekha, Advocate Sr.No. 1886

+1 cc to M/s.K.Rajasekaran, Advocate Sr.No. 2211

C.M.A. No. 2191 of 2010

RR(CO)
RMP(04/03/2021)



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