

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

C.M.A. No. 2045 of 2009

Senthilkumar

... Appellant

-vs-

1. M.Sivasamy

2. The Branch Manager,
The National Insurance Company,
Palaniappa Complex,
1272-1773, Mettur Road,
Erode - 638 001.

... Respondents

(Cause title amended vide order of Court dated 30.07.2009 made in C.M.A. No. 2045 of 2009)

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923 against the order passed by the Commissioner for Workmen's Compensation in W.C. No. 300 of 2005 on the file of Commissioner Workmen's Compensation Court, Salem dated 31.01.2008 is liable to be set aside.

For Appellant : Mr.V.Ragunathan

For Respondents: R1 not claimed

Mr.D.Bhaskaran for R2

J U D G M E N T

The award dated 31.01.2008 passed in W.C. No. 300 of 2005 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellant was a well qualified driller at the time of the accident. The first respondent one Sivasamy is the owner of the Rig vehicle bearing Registration No. TN47A2499, which is known as "M/s.Gawin Rig Service". The appellant was an employee with the first respondent as a driller, for a monthly salary of Rs.3,500/- and Rs.40/- per day as Batta. The National Insurance Company is the insurer of the vehicle with regard to the claims, if made any.

3. On 09.10.2003 at about 5.30 p.m. after completion of the borewell drilling work at the well which belongs to one Perumalsamy of Varathottam, Narikkalpatti, Palani Taluk, when the appellant was uplifting the drilling machineries, his right hand was crushed by the belt of the crane. Due to the said accident, little finger of the appellant in his right hand was amputated and he sustained grievous injuries and had taken treatment. The petition under the Workmen's Compensation Act was filed. The Deputy Commissioner of Labour, Salem adjudicated the issues with reference to the issues raised. The Deputy Commissioner of Labour relied on the ground that, under Section I of the policy in respect of loss or damage resulting from over turning arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto, except loss or damage arising currently from fire, explosion, self ignition or lightning or burglary, house breaking or theft. and thus, the Insurance Company shall not be liable to pay the compensation. In view of the said reasons, the Deputy Commissioner of Labour arrived a conclusion that the second respondent/Insurance Company is not liable to pay compensation. But the first respondent/owner of the vehicle is liable to pay compensation to the employee. Accordingly, an award was passed that the first respondent/Mr.Sivasamy, to deposit a sum of Rs.1,17,600/- along with interest from the date of accident ie., 09.10.2003 at the rate of 12% simple interest per annum till the date of deposit within a period of 30 days from the date of receipt of the order.

4. This Court is of the considered opinion that the first respondent/owner of the vehicle had not preferred any appeal. But the workman himself preferred an appeal in order to defend the owner of the vehicle and get compensation from the Insurance Company. Such an approach itself arises a doubt whether the employee has colluded with the owner of the vehicle and filed the appeal in order to get compensation from the Insurance Company. The Insurance Policy is a contract. The Insurance Company is liable to pay the compensation in accordance with terms and conditions stipulated in the policy. If the conditions of the policy are violated, then the Insurance Company is not liable to pay compensation and in the present case, the Deputy Commissioner by considering the terms and conditions, arrived a conclusion that the owner of the vehicle has to pay compensation to the victim. This being the factum established, this Court is not inclined to interfere with the findings of the award passed by the Deputy Commissioner of Labour fixing the liability on the owner of the vehicle. Accordingly, the award dated 31.01.2008 passed in W.C.No.300 of 2015 stands confirmed and Civil Miscellaneous Appeal stands dismissed. No costs.

5. However, the first respondent is directed to deposit the entire award amount with accrued interest and on such deposit, the appellant is entitled to withdraw the same by filing appropriate application.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

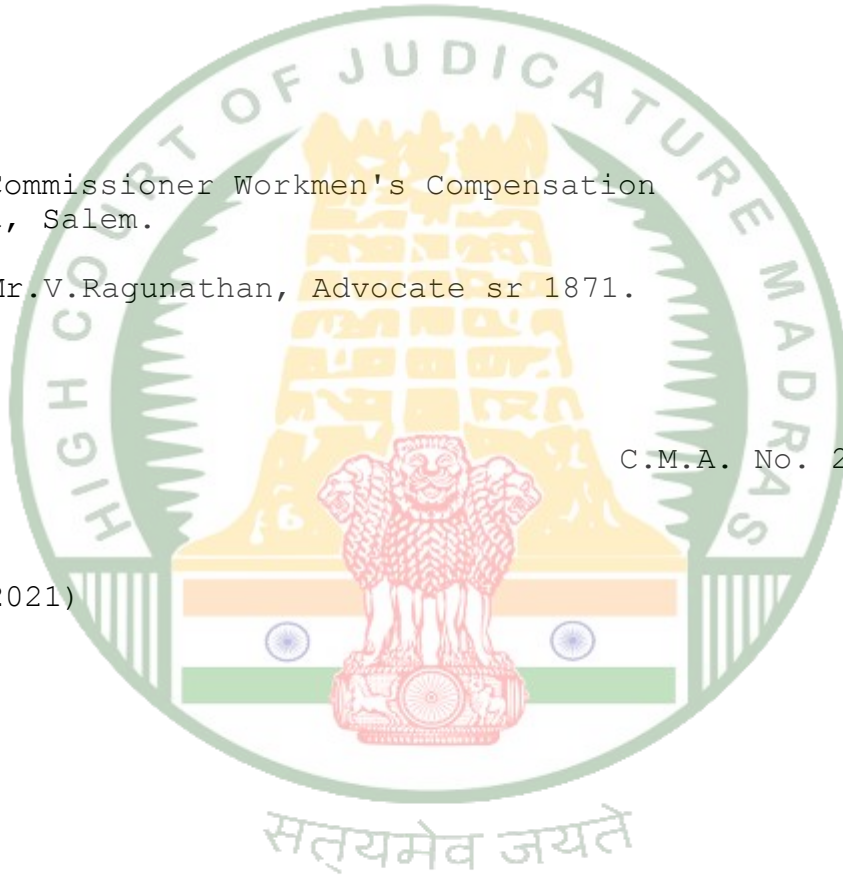
vji/ssb
To

The Commissioner Workmen's Compensation
Court, Salem.

+1 CC to Mr.V.Ragunathan, Advocate sr 1871.

C.M.A. No. 2045 of 2009

KV(CO)
SP(15/04/2021)



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